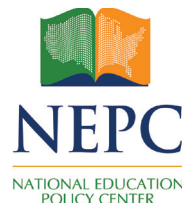


Safe at School:

Addressing the School Environment and LGBT Safety through Policy and Legislation

By Stuart Biegel & Sheila James Kuehl



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SAFE AT SCHOOL

ADDRESSING THE SCHOOL ENVIRONMENT AND LGBT SAFETY THROUGH POLICY AND LEGISLATION

Stuart Biegel
Sheila James Kuehl

Executive Summary

Lesbian, gay, bisexual, and transgender (LGBT) students face a unique set of safety concerns each day. Over 85% report being harassed because of their sexual or gender identity, and over 20% report being physically attacked. Far too often teachers and administrators do nothing in response. In part because of this, the suicide rate for LGBT students continues to be 3-4 times higher than that of their straight counterparts, and in some parts of the country LGBT runaways may comprise up to 40% of the entire teen homeless population.

Advances in law and policy have helped lead to much more fulfilling and productive lives for many LGBT persons, but the **problems facing LGBT youth in America's public schools are still** substantial. Gay and gender-non-conforming students continue to be confronted with challenges that can become overwhelming. Court records and academic research reveal a highly troubling pattern of mistreatment, negative consequences, and a dramatic failure on the part of many educational institutions to adequately address LGBT-related issues and concerns.

This brief describes those issues, presents concrete policy recommendations, and then offers model statutory code language to implement many of those recommendations. Among other things, this brief documents:

- Recurring examples of traumatic peer mistreatment, often with faculty complicity.
- The resulting harm to the academic achievement and aspirations of LGBT students.
- Lives lost, both directly through assaults and indirectly through suicide.
- LGBT runaway rates and teen homelessness rates that remain disproportionately high.
- The particular ongoing challenges faced by LGBT students of color.

The brief also presents evidence of the following structural and institutional failures:

- Failure to appreciate the overarching importance of school climate generally.
- Failure to recognize that LGBT educators can play valuable, positive roles.
- Failure to address the persistent overt homophobia in many school sports programs.
- Misuse of the special education system, which further exacerbates LGBT mistreatment.

- Minimal coverage of LGBT issues in many teacher-education and professional-development programs.

To address these needs, this brief presents a menu of policy recommendations and legislative options. School districts and states are encouraged to adopt all or some whenever possible.

Key Policy Recommendations about School Climate

- Adopt proactive school climate initiatives that demonstrate a commitment to inclusive policies and shared values within our pluralistic society.
- End discriminatory disciplinary practices and the inappropriate referral of LGBT students to special education.
- Implement LGBT-specific programs or activities at individual school sites, which may include safe zones, gay-straight alliances, and suicide prevention programs.

Key Policy Recommendations about Curriculum and Pedagogy

- Develop and implement LGBT-related professional development, locally determined and agreed upon by faculty and staff, for all school-site personnel.
- Align classroom pedagogy with shared values and respect for differences.
- Include age-appropriate LGBT-related content in the curriculum.

Key Policy Recommendations about School Sports

- Involve key members of campus athletic programs in LGBT-related initiatives.
- Make it clear that homophobic comments and actions by coaches and student athletes are completely unacceptable.
- Encourage student athletes to participate in targeted programs such as initiatives addressing bullying and hate violence, as well as gay-straight alliances, safe zones, and wellness programs.

Legislative Recommendations: A Menu of Options at the State Level

The model code presented in the brief builds on the research findings and policy recommendations. It contains a range of options for state legislatures to adopt, including general prohibitions against bullying, harassment, and intimidation in the schools, general prohibitions against discrimination in the schools, and specific prohibitions barring discrimination against and mistreatment of LGBTs. Also included are ideas for statutory policies that may be adopted pursuant to such prohibitions, and sections addressing teacher education and professional development.

The recommended policy approaches in Part II and the model legislation in Part III together constitute a menu of strategies to further the interrelated goals of equal access, equal opportunity, equal respect, equal dignity, and an end to the marginalization of LGBT youth. None of these strategies are offered in isolation. Rather, they can work together on multiple

levels, with efforts in one sphere of activity fueling efforts in another, and with one initiative building upon another. The overarching purpose of all these recommendations is to make schools safe and improve the quality of life for everyone within our education system.

SAFE AT SCHOOL: ADDRESSING THE SCHOOL ENVIRONMENT AND LGBT SAFETY THROUGH POLICY AND LEGISLATION

The legal responsibilities of educators to lesbian, gay, bisexual and transgender (LGBT) students¹ **in America's public schools** are generally the same as those owed to any student. Under well-settled mandates that apply nationwide, school-district employees must endeavor to provide a safe and supportive learning environment for every person who is enrolled.² Yet in spite of ongoing progress on the legal and public policy fronts, gay and gender-non-conforming students continue to face violence, threatening circumstances, and significant impediments to learning.³

The brutal 2008 killing of 15-year-old Lawrence King in a Southern California public school is a notorious example of these dangers. King, a gender-non-conforming student of color, was shot by a fellow student only a few days after he had come out as gay. He was working on a computer during his eighth-grade English class when the other student—just 14 years old—came up **behind him and shot him twice in the head. King's friends described how the victim had been mistreated at school, and they told of the highly negative reaction many of his male classmates had to his recent coming out.**⁴

In a like manner, aggression directed toward students based on the perception that they might be gay reportedly led to the suicides of two 11-year-old boys in 2009, just two weeks apart. News reports documenting these events included extensive interviews attesting to the trauma experienced by Massachusetts African American student Carl Walker-Hoover and Latino student Jaheem Herrera of Georgia. They were each subjected to relentless name-calling and bullying by schoolmates who perceived them to be gay.⁵ While neither identified as gay, there was evidence in the news reports of gender non-conformity, to which their classmates responded in an all-too-common way.⁶

Unfortunately, these tragic events are just the tip of the iceberg and reflect the widespread persistence of challenges faced by many LGBT persons in K-12 education settings. Studies show that LGBT students are more likely than other students to feel unsafe in school and that the mistreatment they face interferes with their ability to succeed.⁷ Gay and gender-non-conforming students often stop coming to classes regularly; many drop out, run away from home, or attempt suicide.⁸

Extensive data have been compiled on gay and gender-non-conforming youth over the past decade. The National Mental Health Association, for example, has classified LGBT students as an **at-risk population. "Gay and lesbian teens are at high risk," the NMHA reports, "because 'their distress is a direct result of the hatred and prejudice that surround them,' not because of their inherently gay or lesbian identity orientation."**⁹ A noteworthy study has shown that K-12 students who are LGBT or thought to be LGBT are bullied more than twice as much as any other identifiable group.¹⁰ And given the fact that such circumstances can be compounded by a lack of

acceptance at home or in the community, it is not surprising that LGBT runaways may comprise up to 40% of the entire teen homeless population in some geographic locations¹¹ and that the suicide rate for LGBT students continues to be three to four times higher than for their straight counterparts.¹²

Part I of this policy brief provides an overview of what we know both from court records and from researchers concerning the LGBT-related issues that persist in schools. Part II addresses what K-12 educators can and in many cases already have done to keep campuses safe and improve the quality of life for everyone within schools. Part III presents model legislation to not only ensure that such programs and approaches are put in place, but also strengthen and reinforce the valuable efforts of so many people in this area.

Part I

Harassment of LGBT students in schools is well-documented by court cases and by a growing body of academic research. The court records illustrate in vivid detail the school environment that individual LGBT students have faced. The academic research confirms that these experiences of hostile environments are not isolated, but are common experiences for LGBT students across the country.

Court Records

Peer-mistreatment cases brought by gay and lesbian students against school districts—primarily under the First Amendment, the Fourteenth Amendment, or some combination of the two—tend to follow certain recurring scenarios. Court records document patterns of horrific mistreatment by fellow students for no reason other than the actual or perceived sexual or gender identity of the victim, plus a substantial level of complicity by school officials.¹³ This complicity includes not only looking the other way when mistreatment occurs but often admonishing the victims and blaming them for bringing it on themselves by either being openly gay or “**acting**” gay. **In some cases, school officials actually join in the harassment and mistreatment by mocking, demeaning, or even punishing the victimized students for what has occurred.**

The breakthrough case in this context was *Nabozny v. Podlesny*, successfully litigated by a Wisconsin public school student who was brutally mistreated by his peers over many years while **being told by school officials that “boys will be boys” and that this would not be happening to him if he were not openly gay.** The mistreatment—which led to a nervous breakdown, hospitalization, and attempted suicide—included verbal harassment, physical beatings, being urinated upon, and having a mock rape performed on him in science class while his fellow students cheered.¹⁴

Before that 1996 court decision, no LGBT student had ever won a discrimination lawsuit against **a school district, but since Jamie Nabozny’s landmark victory in the Seventh Circuit Court of Appeals, students have consistently achieved court victories.** The unfortunate reality, however,

is that the same pattern of events has persisted in all too many places during the 14 years since the decision was handed down. The following cases are representative examples of the ways in which this pattern of peer mistreatment and faculty complicity continues to damage the lives of LGBT youth.

a. *Flores v. Morgan Hill USD* (9th Cir. 2003). On numerous occasions in Morgan Hill, a San Jose area school district, harassment took place in classrooms and in front of teachers who either did nothing to end it or blamed the victims. For example, when Freddie Fuentes was **called “faggot” and “queer” by other students in history class and told them to stop, the teacher** took Freddie out into the hallway, told him that **he** had disrupted class, and shoved him against a wall. In drafting class, Freddie was regularly harassed and threatened in front of the teacher, who did nothing.¹⁵

Indeed, Freddie experienced discriminatory treatment from district officials as early as the seventh grade. While waiting at the school bus stop one morning, a group of students **surrounded him and beat and kicked him, calling him “faggot” and saying “you don’t belong here.” Yet the bus driver not only ignored the scene when he drove up but let the attackers board** the bus, leaving Freddie lying on the ground as he drove away. Freddie had to be treated at a hospital and was ultimately forced to transfer to another school after officials said that they could not ensure his safety.

Alana Flores experienced ongoing mistreatment with regard to her locker. Although she reported that other students had scratched anti-gay obscenities into the paint on her locker door, the school left the words on her locker for months before painting them over. Another time, Alana found a picture of a naked woman, bound and gagged, with her legs spread and her **throat slashed, taped to her locker. On the picture, someone had written, “Die, die dyke bitch, fuck off. We’ll kill you.” Alana, frightened and crying, took the photo to the assistant principal, who only scolded her, telling her to go back to class and saying, “Don’t bring me this trash anymore, this is disgusting.”**¹⁶

Given the typical response of Morgan Hill school officials to these events, student perpetrators bragged that they were allowed to get away with their behavior. Ultimately, one LGBT victim felt she had no choice but to drop out of school. Another entered independent study to escape the daily taunting and the attacks. After years of litigation and several appeals, the students won a clear victory. The Court found that the district had anti-harassment policies in place but they were clearly and consistently enforced in a discriminatory fashion.

b. *Boyd County High School Gay-Straight Alliance v. Bd. of Ed. (D. Ky 2003)*. In *Boyd*, a Kentucky Court concluded that the evidence of anti-gay activity at the public high school demonstrated the need for a gay-straight alliance. **In one incident, students in one plaintiff’s English class stated “that they needed to take all the fucking faggots out in the back woods and kill them.” In another, during a basketball game, “students with megaphones chanted at another plaintiff: ‘faggot-kisser’ and ‘fag-lover.’” And during a lunch hour observance of National Day of Silence in support of LGBT youth and their allies, heckling students “used anti-gay epithets and threw things” at 25 participants who sat in a circle in the front lobby. At least two victims reportedly dropped out because of such mistreatment.**¹⁷

c. Ramirez v. LAUSD (settled in 2005). In a case that was settled for a large sum of money and mandatory training for students and faculty, court records document a level of faculty and staff complicity at Washington Prep High School that went significantly beyond refusing to intervene or blaming the victim.¹⁸ Indeed, much of the harassment actually came from the adults at the school. For example, administrators, teachers, and staff called students names such as “faggot” and “sinner” and told the students they were “wrong,” “unholy,” “hate[d],” and “not supposed to be like this” because the students were, or were perceived to be, lesbian, gay, or bisexual. But perhaps the most egregious mistreatment occurred when school officials—who routinely ignored expressions of affection on campus between heterosexual couples—abusively humiliated plaintiff David Ramirez and a male friend for kissing during lunchtime. After videotaping the kissing via a campus surveillance camera, they escorted both students to the office, where security personnel and administrative staff forced the students to watch the videotape over and over again while they taunted, berated, and mocked them.¹⁹

d. Gillman v. School Board for Holmes County, Florida (N.D. Fla. 2008). A group of students who were punished after publicly supporting a mistreated classmate prevailed in the *Gillman* case under the First Amendment Free Speech Clause.²⁰ Twelfth-grader “Jane Doe” had come to Principal David Davis to report that she had been harassed on account of her sexual orientation by a group of middle-school students. He first asked her if she was a lesbian, and when she said that she was, he told her that it was not “right,” and said he would have to call her parents and let them know she was identifying as gay at school. He also instructed her “to ‘stay away’ from the middle school students or . . . he would suspend her.” After fellow students protested this mistreatment, the principal interrogated 30 of them about their own sexual orientations, suspended 11 of them, and told the mother of one that he could secretly “send her [daughter] off to a private Christian school down in Tallahassee” or to the juvenile detention center and that “if there was a man in your house, your children were in church, you wouldn’t be having any of these gay issues.”²¹

The U.S. District Court was especially critical of Davis, who was demoted after the decision was released. The principal “responded to Jane Doe’s complaints of harassment by other students, not by consoling her, but by shaming her,” Judge Richard Smoak wrote. “Davis’s conduct, in the capacity of a role model and authority figure, is particularly deplorable in light of studies which confirm the vulnerability of gay and lesbian students.”²²

Research Findings Generally

An extensive national study released in late 2008 by the Gay, Lesbian and Straight Education Network (GLSEN) found that 86.2% of LGBT public school students reported being verbally harassed because of their sexual orientation, 44.1% were physically harassed, and 22.1% were physically assaulted. The majority of these students did not report the incidents to school officials, believing that little or no action would be taken or that the situation might even be exacerbated if reported. Nearly one-third of those who did report the mistreatment said that school officials did nothing in response.

Such a dynamic inevitably affects both achievement and aspirations. Of the LGBT students surveyed, 32.7% missed a day of school because of feeling unsafe, compared with only 4.5% of a national sample of secondary school students. Not only do their grades suffer as a result, but the percentage of LGBTs who do not plan to pursue a post-secondary education is almost twice that of a national sample of students generally.²³

Scholarship focusing on gay and gender-non-conforming youth consistently find that significant percentages of LGBT students in K-12 public schools are continuing to experience a negative self-image, stunted emotional growth, and ongoing challenges above and beyond those of the typical adolescent. These challenges occur at every level of social interaction.²⁴

Many gays and lesbians encounter a great deal of tension between themselves and members of their biological family. When LGBT students come out, major adjustments may be required between and among friends, and friendships may be terminated. Homophobic comments, threats, and even physical assaults are part of the daily experience for many, both within and outside school.²⁵

Not only do these gay and lesbian students receive the message from many sources and levels that there is something wrong with being LGBT, they are often unable to experience the stages of development that unfold easily for many of their straight counterparts. When heterosexual students reach adolescence, they generally benefit from well-developed and long-established **roadmaps regarding how they should and shouldn't be acting and what the consequences of such actions might be.** When gays and lesbians reach adolescence, there is no comparable set of roadmaps available to them. Instead, they are typically confronted with messages that shout out to them that they are out of step with generally accepted patterns and norms.²⁶

In addition, the circumstances facing LGBT youth are compounded by their often being pigeon-holed based on negative stereotypes and nefarious myths ranging from the misconception that a **gay identity is the equivalent of a hedonistic "lifestyle" focused predominantly on sex to the** dangerously defamatory stereotype that gays are hypersexualized predators who cannot be trusted.²⁷

LGBT youth of color face additional challenges.²⁸ A study by the National Gay & Lesbian Task Force, for example, found **that LGBT youth of color may confront a "tricultural" experience,** facing homophobia from within their racial or ethnic group, racism from LGBTs of other racial or ethnic communities, and a combination of the two from society at large.²⁹ Researchers have warned that educators must beware of generalizations in this regard, especially since the topic is highly nuanced and only recently the subject of extensive scholarship. What does appear to be **constant, however, is that an LGBT person's racial or ethnic identity may further compound the** nature and extent of the complexities that can arise.³⁰

In August 2009, looking back on several decades of LGBT-related scholarship, researchers found that investigations of gay and gender-non-conforming youth still focus primarily on **"deficits such as the role of victimization on mental and physical health, academic achievement, and identity."** However, they also acknowledged that over the previous decade, a growing number of scholars and practitioners urged that a greater focus be placed on the great strength and resilience of LGBT youth. **The researchers concluded that** "it is necessary to continue

examining the risks and challenges,” even as it is important to “incorporate additional perspectives of LGBT youths’ lives and to view these youth as resilient and thriving rather than simply ‘at-risk.’” They proposed a new paradigm that examines the ways in which the social contexts shaping the lives of these young people “influence the persistent inequalities in health risk behavior, mental health, and long-term psychosocial adjustment.”³¹

Consistent with this paradigm, a 2009 National Education Association Report found that LGBT students “from poor and rural communities are acutely disadvantaged in obtaining resources, finding allies, and integrating into school culture.” It also documented the fact that “gay and gender non-conforming youth of color are at elevated risk of harassment and social, familial, or community estrangement.”³²

All told, taking every aspect of the documented realities into consideration and recognizing the multiple nuances that may exist, it is difficult not to conclude that additional efforts by school officials are imperative if educational institutions are to fulfill their obligations to treat all students equally under the law. The 1996 *Nabozny* decision marked a crucial turning point in the development of legal protections.³³ But affirmative steps are necessary in order to overcome the obstacles faced by gay and gender-non-conforming youth.

Part II

Research has shown that complex problems in school settings are often best addressed through a combination of approaches and initiatives.³⁴ Accordingly, we first present public policy recommendations, followed by a model legislative code that can strengthen and reinforce those policies.

The recommended approaches in Part II and the model legislation in Part III together constitute a menu of strategies designed to further the interrelated goals of equal access, equal opportunity, equal respect, equal dignity, and an end to the marginalization and disenfranchisement of LGBT youth. None of these strategies are offered in isolation. Instead, they can work together on multiple levels, with efforts in one sphere of activity fueling efforts in another and one initiative building upon another.³⁵

Basic Guiding Principles

Our suggested approaches are based on six key principles:

- Organizational change should include teacher education and administrator training in credentialing programs, professional development within individual districts, school-family-community partnerships, and collaborative leadership by educators.
- LGBT students should not be viewed as separate and apart from other identifiable persons and groups, particularly since gay and gender-non-conforming youth often have

multiple identities, and may also be people of color, English-language learners, students with disabilities, devoutly religious, dedicated athletes, etc.³⁶

- Strategies do not always have to be LGBT-specific to be successful. Indeed, broad, general approaches applicable to all students can help address many LGBT needs.
- School-climate policies seeking to promote respectful interaction can be designed in a manner that comports with the First Amendment. Education officials have broad power to restrict expressive activity that is reasonably likely to lead to material and substantial disruption or to interference with the rights of others.³⁷ Indeed, a key component of K-12 First Amendment jurisprudence is its focus on preventing the type of escalating violence that is often set in motion by bullying, harassment, and intimidation.³⁸
- LGBT educators can serve as valuable resources in this regard, both day to day in the schools and in professional-development settings. But instead of taking advantage of the fact that openly LGBT teachers, coaches, and school-site administrators can play a central and highly positive role, too many districts continue to put explicit or implicit pressure on these educators to keep their identities closeted.³⁹
- It is not possible to address problems without being able to talk about them. To fully and effectively take on the LGBT-related issues that persist in schools, all members of the school community must be able to discuss the topic openly, in a courteous, respectful, and professional manner, and in all possible settings.

Building on these principles, the following policy recommendations address three interrelated areas: a proactive focus on school climate, LGBT-related curriculum and pedagogy, and the often-overlooked topic of school sports.

A Proactive Focus on School Climate

The term *school climate* generally encompasses such things as school culture, mood, the degree to which people get along, respect for differences, motivation, pride, and vision.⁴⁰ The linchpin of a positive school climate is the existence of collaborative and optimistic working relationships between and among all members of the school community. Research strongly indicates that the proliferation of such relationships will go a long way toward preventing the type of mistreatment and discriminatory conduct documented in Part I.⁴¹

Menu of Strategies in the Area of School Climate

1. *Adopt proactive rather than reactive initiatives.*

Rather than waiting, and figuring out what to do only after problems arise, school leaders should develop and implement proactive and preventive strategies for creating a healthy school climate.

2. *Focus consciously on school climate in day-to-day planning, activities, assessments, and evaluations.*

At their best, U.S. public schools embody inclusiveness, as reflected in the celebration of similarities and respect for differences. Such a dynamic inevitably involves a conscious focus on school climate, which has proven to be a key feature of successful efforts to address issues relating to marginalized individuals and disenfranchised groups.

The spirit of community that accompanies a positive school climate can be particularly important for students of color and LGBT students who may see themselves, incorrectly, as not capable or as less capable than others.⁴²

3. *Commit to inclusive policies and shared values within our pluralistic society.*

Young people bring to the table diverse backgrounds and unique personal perspectives, including those associated with LGBT status. Policy and practice should be responsive to and inclusive of that diversity.⁴³

4. *Strive to end discriminatory discipline practices and the inappropriate referral of students to special education, which can have a particularly negative impact on marginalized and disenfranchised groups.*

Inappropriate referral to special education was an especially egregious aspect of the Jamie Nabozny case. Not only did the facts indicate no apparent disability, but the referral actually increased the level of mistreatment.⁴⁴ Similarly, in the Derek Henkle case, the Nevada school district blamed the openly gay victim for the mistreatment he suffered and, as a result, transferred him out of a traditional high school and ultimately to an adult school. District officials actually told him that “because he was openly gay...a traditional high school was not appropriate.”⁴⁵

Scholarly literature documents the disproportionate and inappropriate referral of students of color to *separate* special education classes.⁴⁶ LGBT students of color can be particularly impacted by this practice, which increases peer exclusion (and victimization), which in turn reduces classroom engagement and achievement.⁴⁷ But the literature also includes a range of strategies educators can adopt to prevent such egregious and often counterproductive practices.⁴⁸

5. *Communicate guidelines and tenets for improving school climate to students, not just educators. They should also be taught directly, in an age-appropriate manner, especially in the secondary grades.*

Many of the strategies highlighted in this section contemplate this very type of education: working with young people to build social and emotional skills, informed by the research literature.⁴⁹

6. *Consider adopting one or more structured school-climate programs, which often provide—but are not limited to—opportunities for service learning, diversity education, and character education.*

Structured school-climate programs can serve the particular circumstances of individual campuses. Programs range from those that focus on building a positive and welcoming environment generally to those addressing more narrowly defined goals. Lessons and activities are often designed to help develop interpersonal skills.⁵⁰

7. *Consider adopting one or more specific initiatives that address such areas as bullying, hate violence, and at-risk youth generally.*

Such focused initiatives, which are not generally LGBT-specific, have been implemented successfully in many parts of the country. Not only do they target certain types of behaviors among all students, but they can also help address issues of physical and mental health for those with particular needs.⁵¹

8. *Implement one or more LGBT-specific programs or activities at individual school sites, such as safe zones, gay-straight alliances, suicide-prevention programs, and wellness centers geared toward students of particular races or ethnicities.*⁵²

Research-based programs and activities with proven track records have been developed over the past several decades to assist school officials in providing targeted support specifically for LGBT youth at individual campuses. Most contemplate the active involvement of faculty liaisons who agree to play prominent roles.⁵³ In general, these initiatives focus on immediate issues of health and safety as well as on effecting longer-term changes in both school culture and societal norms.

Age-Appropriate LGBT-Related Curriculum and Pedagogy

There are many reasons to include LGBT-related content in the curriculum. From an academic perspective, such content often fits within state curriculum frameworks and is therefore aligned with state standards developed pursuant to the No Child Left Behind Act.⁵⁴ From a school-climate perspective, such content has been shown to aid in the personal growth and well-being of gay and gender-non-conforming students, while at the same time fostering collaboration and helping to create a safer campus environment for all students, gay and straight.⁵⁵

As will be set forth below, recommended approaches in this area include incremental professional development for faculty and staff, changes in classroom pedagogy, and the inclusion of LGBT-related content in the curriculum.

Menu of Strategies in the Area of Curriculum and Pedagogy

1. *Develop and implement professional development for all school personnel (locally determined and agreed upon by faculty and staff), focusing on the challenges facing LGBT youth and seeking to generate collaborative, problem-solving approaches to address those challenges.*⁵⁶

At a minimum, administrators, faculty, and staff should be cognizant of the fact that courts are increasingly unwilling to condone actions (or neglect) by school officials that contribute to the mistreatment of LGBT youth. Educators can go much further than the minimal requirements of court decisions and legislation, however. Treating every student with equal respect and equal dignity entails learning more about the challenges faced by members of marginalized and disenfranchised groups.

2. *Structure professional development incrementally, beginning with only a modicum of content but providing opportunities to build on the initial steps.*

Research has shown that professional development is best seen as a form of collaborative dialogue among educators as well as a vehicle for keeping abreast of new developments in **their respective fields. Mandatory “top-down” programs, where alleged experts are brought in on a one-time basis to “lecture” faculty and staff, are substantially less effective than brainstorming regarding new strategies and follow-up meetings to share results.**⁵⁷

Such collaboration is inevitably enhanced by the participation of out LGBT educators and other openly LGBT members of the community, perhaps including out students from the older grades. Steps can be incremental in nature; even minor movement forward can matter greatly. Professional development can start off with items as simple and basic as an information sheet or an e-mail, expand to include guest speakers, film clips, and brainstorming regarding possible strategies, and even continue with a dialogue regarding changes in classroom pedagogy and curricular content.⁵⁸

3. *Changes in classroom pedagogy can include a focus on shared values and respect for differences in day-to-day lessons, a decision by teachers to stop trying to avoid mentioning LGBT-related words (such as gay and lesbian) in class but instead using the terms naturally as appropriate, and a determination to confront heteronormativity.*

Researchers have defined **heteronormativity** as the assumption or expectation that everyone is heterosexual, that it is normal to be heterosexual, and that it is not normal to be anything else.⁵⁹ In many ways during daily conversations and interactions, educators say and do things that perpetuate these social and cultural norms. Often without realizing it, public schools are sending young LGBTs a harmful dual message: that something is wrong with them, and that, for official purposes at least, they do not exist.⁶⁰ Yet few educators are aware of this dynamic. Developing such an awareness can lead to positive change.

4. *Those considering including LGBT-related content in the curriculum can learn much from the higher-education experience and the content addressed in courses at colleges and universities.*

At colleges and universities today, for example, students can take courses on LGBT-related developments in recent history. In law schools, students can study LGBT legal issues. In education schools, future teachers and school-site administrators can address gay and transgender-related issues that may arise in their work. This type of content can and increasingly does provide a model for K-12 educators regarding what might be included in an age-appropriate manner in their own classrooms.⁶¹

5. *A reasonable, age-appropriate K-12 curriculum might include references to families headed by LGBT people during a unit on the family in the elementary grades, LGBT-related content within a current events unit in middle school, and the inclusion of the gay and transgender rights movements in a high school history unit on post-World War II rights movements generally.*⁶²

Including families headed by LGBT people in a unit on families will help ensure that all students in the class feel welcome. The current events model in particular can be employed throughout the secondary grades, incorporating LGBT-related front-page stories in a manner reflecting subject matter aligned with state-approved content standards, and in an age-appropriate manner.⁶³

The Often-Overlooked Topic of School Sports

Often overlooked in an analysis of LGBT issues is just how substantial the influence of organized sports can be on the lives of students.⁶⁴ Sports are the single most important factor in the climate of many high schools, **located at the very center of the school's culture. The sports culture becomes, for all practical purposes, one and the same as the campus culture.** Physical education (PE) activities also can be central to the development of school culture at lower grades.

Accordingly, in many K-12 settings, if school officials desire to change the campus culture, they must address the sports culture as well. Unfortunately, the culture of sports often marginalizes gay and gender-non-conforming youth by perpetuating homophobia and transphobia.⁶⁵ Defamatory myths and negative mindsets regarding LGBTs are particularly prevalent in sports settings, such as the canards that gay males are weak and unreliable or that gay males and lesbians are hyper-sexualized predators who cannot be trusted.⁶⁶

Further complicating matters is that not all of this is under the control of school districts. Young people may be exposed to pervasively homophobic comments and behaviors when they participate in sports programs outside of school. The culture persists after high school, and it is **typically at its worst in men's team sports.**⁶⁷

Strategies in the Area of Organized Sports

Many of the research-based principles identified above regarding other aspects of schooling are also directly applicable to the area of school sports, and the programs and activities recommended throughout Part II can help ameliorate negative aspects of the sports culture. In addition, the following strategies should be considered:

1. *To the extent possible, LGBT-related initiatives at individual school sites should include the active assistance of key personnel in campus athletic programs.*

Ideally, this would include coaches and team leaders as well as administrators who are former coaches or former athletes, all of whom would have the standing to help create change by working together with others at the school site.⁶⁸

- 2. In a best-case scenario, openly LGBT athletes, former athletes, and coaches should be enlisted to help with professional development and with orientation programs for athletes.*

The potential impact of an out coach, an out athlete, or an out administrator/former athlete in this area cannot be overstated. Openly LGBT persons from within the campus sports community, working together with other committed faculty and staff, can exemplify the ideal of a positive, welcoming, and collaborative school climate.

- 3. Athletes should be encouraged to participate in the range of targeted programs highlighted above, from initiatives addressing bullying and hate violence to gay-straight alliances, safe zones, and wellness programs.*

It may even be the case in some communities that the active participation of campus sports figures in such initiatives could lead to innovative approaches within the programs, such as a new type of gay-straight alliance for athletes.

- 4. With regard to changes in pedagogy, coaches and physical education instructors can have a substantial impact by not only putting an end to their own homophobic and transphobic comments but also by making it clear that anti-gay slurs and other forms of gay-bashing are completely unacceptable on the field, in the gym, in the locker room.*

Autobiographies and memoirs by gay, lesbian, and transgender authors who have participated in organized sports continue to document the fact that coaches can be among the worst perpetrators of an anti-LGBT mindset. While it is certainly true that the problems in this area are much broader and more multi-dimensional than the actions of any individual person or group of persons, the influence of coaches cannot be ignored.⁶⁹ Some simple changes in their day-to-day teaching style would go a long way toward helping change negative aspects of the sports culture.

- 5. Within the framework of one or more of the initiatives described on these pages, school officials should seek the active involvement of the larger sports community, including student families, after-school sports programs such as little leagues and soccer leagues, local college and professional athletic programs, and others.*

Indeed, more than for any other issue addressed in these pages, school officials cannot go at it alone here. Just as educators seeking to effect positive change in this area have benefited greatly from the LGBT-related work of many within the larger community, so too do they need the help of those at the institutional level within organized sports nationwide.

The problems facing LGBT youth in America's public schools are far greater than most people realize. Gay and gender-non-conforming students continue to be confronted with challenges that can become overwhelming. Those who are not out may be facing the most difficult challenges of all, often finding themselves alone, apart, and unable to take advantage of the support networks that are increasingly available.

These problems are compounded by the fact that too many people still seek to politicize these issues, and too many educators still think they can ignore them. Other educators may acknowledge that problems exist, but either believe that there is not much that educators can do

on this front or that LGBT issues are beyond the scope of what public schools should be taking on.

It is clear, however, from both the research literature and the documented results of successful programs, that there is a great deal that can be done, from credential requirements and professional development to local initiatives and school-family-community partnerships. Numerous approaches that range from a generalized focus on school climate to programs that explicitly target LGBT issues provide models for success that educators can emulate and build upon.⁷⁰

Part II of this policy brief has provided a roadmap for action on multiple fronts, with a menu of proven options that can help address the complexities that currently exist. The material that follows in Part III constitutes a model code, with legislative initiatives that can be adopted by individual states to help generate action in this area and to help ensure that LGBT youth have the same level of support and the same educational opportunities as everyone else.

Part III

Model Legislation Related to Bullying, Harassment, Intimidation and Discrimination in the Schools, Including Specific Sections Concerning Sexual Orientation and Gender Identity

Introduction

Many states have enacted legislation prohibiting the bullying and harassment of students in public schools.⁷¹ Some states include statutes related to bullying in the same statutory framework as sexual harassment and violence in the schools.⁷²

Fewer states have enacted legislation specifically prohibiting discrimination, harassment, or bullying in schools based on particular personal characteristics, such as race, gender or religion. Those states that have adopted such laws generally delineate the specific groups which are to be protected from official discrimination,⁷³ harassment, or bullying,⁷⁴ and these groups vary from state to state. In those states that include sexual orientation and gender identity among the groups to be protected,⁷⁵ LGBT students are protected by provisions that include a more complete list of personal characteristics. Some states also protect educators from discrimination on these same bases.⁷⁶

The Model Code set out below is not necessarily meant to be adopted as a whole but rather suggests language that may be adopted in the larger context of bullying, harassment and intimidation; language that may be adopted by states wishing to enact statutes barring discrimination on specific bases; and language specific to the protection of LGBT students and staff.

In addition, because sex education and education related to HIV/AIDS and sexually transmitted diseases are important parts of school health programs, but do not always take sexual orientation into account, LGBT students may be denied the information they need for their protection and safety. Although outside the scope of this **white paper, California's complete statute concerning these issues may be accessed [here](#).**⁷⁷

Model Code: Table of Contents

Section 101. Legislative Declarations and Findings Regarding Bullying, Harassment and Intimidation.

Section 102. Legislative Declarations and Findings Regarding Discrimination.

Section 103. Legislative Declarations and Findings Regarding Sexual Orientation and Gender Identity.

Section 104. Definition of Bullying, Harassment and Intimidation.

Section 105. Definition of Cyber-Bullying.

Section 106. Related Definitions.

Section 107. Prohibition against bullying, harassment and intimidation.

Section 108. Prohibition against discrimination.

Section 109. Prohibition against discrimination on the basis of sexual orientation or gender identity.

Section 110. Prohibition against discrimination in curriculum and permission to include positive information.

Section 111. Prohibition against the application of marital status requirements to discriminate against persons on the basis of sexual orientation.

Section 112. Policies against bullying, harassment, and intimidation.

Section 113. Policies against discrimination.

Section 114. Policies against discrimination on the basis of sexual orientation or gender identity.

Section 115. Professional conduct by educators regarding bullying, harassment, intimidation and discrimination.

Section 116. Education and training on bullying, harassment and intimidation.

Section 117. Education and training on discrimination.

Section 118. Education and training on discrimination based on sexual orientation and gender identity.

Section 119. Requirements for the state teaching credential concerning bullying, harassment and intimidation.

Section 120. Requirements for the state teaching credential concerning discrimination.

Section 121. Requirements for the state teaching credential concerning bullying, harassment, intimidation and discrimination based on sexual orientation and gender identity.

An Act Concerning Schools and Protection from Discrimination and Harassment Based on Sexual Orientation and Gender Identity

1 Be it enacted by the Legislature of the State of ABC that Title XXX is amended to
2 include a new Article 123, which reads as follows:

3

4 **ARTICLE 123 ESTABLISHMENT OF A SAFE PLACE TO LEARN**

5

6 **Section 101. Legislative Declarations and Findings Regarding** 7 **Bullying, Harassment and Intimidation.**

8 The Legislature hereby finds, determines and declares that:

9 (1) The State has a responsibility to provide a safe and respectful learning
10 environment in which all members of the school community, no matter their
11 differing beliefs, characteristics and backgrounds, are treated with dignity and
12 respect, in order to realize their full academic and personal potential. The
13 purpose of this chapter is to prohibit acts that are contrary to that policy and to
14 provide remedies therefore.

15 (2) Every public school student in this state has the right to receive his or her
16 public education, and to participate fully in the educational process, in a safe
17 educational environment that is free from intimidation, harassment, or harm or
18 threat of harm.

19 (3) Any form of bullying, cyber-bullying, harassment or intimidation seriously
20 disrupts the ability of educators to maintain a safe and civil environment, has a
21 negative effect on the social environment of schools, creates a climate of fear
22 among students and the potential for escalating **violence, inhibits students' ability**
23 to learn and succeed, and leads to other antisocial behavior. Bullying behavior
24 has been linked to vandalism, shoplifting, skipping and dropping out of school,
25 fighting, and the use of drugs and alcohol. Research has shown that sixty percent
26 (60%) of males who were bullies in grades six through nine were convicted of at
27 least one crime as adults, and thirty-five percent (35%) to forty percent (40%) of
28 these former bullies had three or more convictions by twenty-four (24) years of
29 age.

30 (4) Successful programs to recognize, prevent, and effectively intervene in
31 bullying behavior have been developed and replicated in schools across the
32 country. By adopting such programs, these schools send the message that

1 bullying behavior is not tolerated and, as a result, have improved safety and
2 created a more inclusive learning environment.

3 (5) Students learn by example, and, therefore, school administrators, faculty,
4 staff, and volunteers should be commended for demonstrating appropriate
5 behavior, treating others with civility and respect, and refusing to tolerate
6 harassment, intimidation or bullying.

7

8 **Section 102. Legislative Declarations and Findings Regarding**
9 **Discrimination.**

10 The Legislature hereby further finds, determines and declares that:

11 (1) All persons in public schools, regardless of their race, color, religion, ancestry,
12 national origin, gender, socioeconomic status, academic status, gender identity,
13 marital status, political party preference, political belief, familial status, physical
14 appearance, sexual orientation or mental, physical, developmental or sensory
15 disability, have equal rights and should be afforded equal opportunities in the
16 educational institutions of the state.

17 (2) Discrimination, harassment or violence, in schools, on school property or in
18 school programs or activities, directed at an individual on the basis of status,
19 personal characteristics, whether actual or perceived, or association with a
20 person with these personal characteristics or status, creates a hostile
21 environment and jeopardizes equal educational opportunity.

22 (3) It is the intent of the Legislature that each public school and school district
23 undertake educational activities for students, faculty and staff, to counter
24 discriminatory incidents on school grounds and, within constitutional bounds, to
25 minimize and eliminate a hostile environment on school grounds that impairs the
26 access of pupils to equal educational opportunity.

27

28 **Section 103. Legislative Declarations and Findings Regarding Sexual**
29 **Orientation and Gender Identity.**

30 The Legislature hereby further finds, determines and declares that:

31 (1) Public school students who are lesbian, gay, bisexual or transgender (LGBT),
32 or are perceived to be LGBT, or who associate with LGBT people, have been and
33 are subjected to pervasive discrimination, including harassment, bullying,
34 intimidation and violence, and have been deprived of equal educational
35 opportunities in schools and in school programs.

1 (2) While discrimination of any kind, including harassment, bullying,
2 intimidation and violence, is harmful to students and to the education system,
3 actions that target students based on sexual orientation or gender identity
4 represent a distinct and especially severe problem.

5 (3) Numerous social science studies demonstrate that discrimination, including
6 harassment, bullying, intimidation and violence, at school has contributed to
7 high rates of absenteeism, dropout, adverse health consequences, and academic
8 underachievement among LGBT youth. Studies indicate that more than 75% of
9 all teenagers have witnessed bullying of classmates who were gay or thought to be
10 gay. These studies also reported that gay or lesbian students or those thought to
11 be gay or lesbian were bullied more often than any other group.

12 (4) When left unchecked, discrimination, including harassment, bullying,
13 intimidation and violence, in schools based on sexual orientation or gender
14 identity can lead, and has led to, life-threatening violence and to suicide. Studies
15 indicate that gay and lesbian youth were 3-4 times more likely than heterosexual
16 youth to attempt suicide.

17 (5) In many schools and school districts, students who are LGBT or gender non-
18 conforming have been inappropriately separated from the general school
19 population through unwarranted administrative placement in special education
20 classes or alternative schools.

21 (6) Public school students enjoy a variety of constitutional rights, including rights
22 to equal protection, privacy, and free expression, which are infringed when school
23 officials engage in discriminatory treatment or are indifferent to discrimination,
24 including harassment, bullying, intimidation and violence, on the basis of sexual
25 orientation or gender identity.

26 (7) The State has a responsibility to ensure that all students have access to public
27 education in a safe environment free from discrimination, including harassment,
28 bullying, intimidation and violence, on the basis of actual or perceived sexual
29 orientation or gender identity and to ensure access to effective remedies for such
30 discrimination.

31 (8) It is the intent of the Legislature that each public school and school district
32 undertake educational activities for students, faculty and staff, to counter
33 discriminatory incidents on school grounds and, within constitutional bounds, to
34 minimize and eliminate a hostile environment on school grounds based on sexual
35 orientation and gender identity.

36 (9) It is the intent of the Legislature that education leading to a state teaching or
37 administrative credential include satisfactory completion of classes related to
38 understanding bullying, discrimination and harassment based on sexual
39 orientation and gender identity.

1 **Section 104. Definition of Bullying, Harassment and Intimidation.**

2 As used in this Title, “bullying”, “harassment”, and “intimidation” include, but
3 are not limited to:

4 (1) Any gesture, written or verbal expression, electronic communication, or
5 physical act, by a student or public school employee or volunteer, that a
6 reasonable person should know will harm another student or employee, damage
7 **another student’s or employee’s property, place another student** or employee in
8 reasonable fear of harm to their person or damage to their property, or ridicule,
9 defame, insult or demean any student or employee or group of students or
10 employees in such a way as to disrupt or interfere with **the school’s educational**
11 **mission or interfere with a student’s education**, academic performance or ability
12 to participate in, or benefit from, the services, activities, or privileges provided by
13 a school.

14 (2) Threats, teasing, social exclusion, stalking, coercion, physical violence, theft,
15 public humiliation, destruction of property, epithets, slurs, graffiti, circulation of
16 written or visual material, taunts concerning manner of speech, negative
17 references to racial or ethnic customs, or incitement of others to take these
18 actions against a student or school employee.

19 (3) Acts reasonably perceived as being motivated by an actual or perceived
20 differentiating characteristic, such as race, color, religion, ancestry, national
21 origin, gender, socioeconomic status, academic status, gender identity, marital
22 status, political party preference, political belief, familial status, physical
23 appearance, sexual orientation or mental, physical, developmental or sensory
24 disability, or by association with a person who has or is perceived to have one of
25 more of these characteristics.

26 (4) Retaliation against a student or school employee by another student or
27 employee for asserting or alleging an act of bullying, intimidation or harassment.

28

29 **Section 105. Definition of Cyber-Bullying.**

30 As used in this Title, “Cyber-bullying” means

31 (1) Bullying, intimidating or harassing by the use of any electronic
32 communication device, through means including, but not limited to, e- mail,
33 instant messaging, text messages, blogs, mobile phones, pagers, online games,
34 social networks and websites, that disrupts or interferes **with the school’s**
35 educational mission or interferes with a **student’s** education, academic
36 performance or ability to participate in, or benefit from, the services, activities, or
37 privileges provided by a school.

1 (2) Accessing or knowingly causing or providing access to data or computer
2 software through a computer, computer system or computer network within the
3 scope of the district school system with the intention of bullying, harassing or
4 intimidating a student or school employee.

5
6 **Section 106. Related Definitions**

7 (1) “Disability” includes mental, physical, developmental or sensory disability.

8 (2) “Disability, race, color, religion, ancestry, national origin, gender, gender
9 identity, marital status, familial status, physical appearance, or sexual
10 orientation” includes a perception that the person has any of those characteristics
11 or that the person is associated with a person who has, or is perceived to have,
12 any of those characteristics.

13 (3) “Educational institution” means a public or private preschool, elementary, or
14 secondary school or institution; the governing board of a school district; or any
15 combination of school districts or counties recognized as the administrative
16 agency for public elementary or secondary schools, including charter schools.

17 (4) “Familial status” means one or more individuals under 18 years of age who
18 reside with a parent, another person with care and legal custody of that
19 individual, a person who has been given care and custody of that individual by a
20 state or local governmental agency that is responsible for the welfare of children,
21 or the designee of that parent or other person with legal custody of any individual
22 under 18 years of age by written consent of the parent or designated custodian.
23 The protections afforded by this Article against discrimination on the basis of
24 familial status also apply to any individual who is pregnant, who is in the process
25 of securing legal custody of any individual under 18 years of age, or who is in the
26 process of being given care and custody of any individual under 18 years of age by
27 a state or local governmental agency responsible for the welfare of children.

28 (5) “Gender” means sex, and includes a person’s gender identity and gender
29 related appearance and behavior, whether or not stereotypically associated with
30 the person’s assigned sex at birth.

31 (6) “Nationality” includes citizenship, country of origin, and national origin.

32 (7) Race or ethnicity” includes ancestry, color, ethnic group identification, and
33 ethnic background.

34 (8) “Religion” includes all aspects of religious belief, observance and practice, and
35 includes agnosticism and atheism.

36 (9) “Sexual harassment” means unwelcome sexual advances, requests for sexual
37 favors, and other verbal, visual, or physical conduct of a sexual nature, made by

1 someone from or in the work or educational setting, under any of the following
2 conditions:

3 (a) Submission to the conduct is explicitly or implicitly made a term or a
4 **condition of an individual's employment, academic status, or progress.**

5 (b) Submission to, or rejection of, the conduct by the individual is used as
6 the basis of employment or academic decisions affecting the individual.

7 (c) The conduct has the purpose or effect of having a negative impact upon
8 **the individual's work or academic performance, or of creating an** intimidating,
9 hostile, or offensive work or educational environment.

10 (d) Submission to, or rejection of, the conduct by the individual is used as
11 the basis for any decision affecting the individual regarding benefits and services,
12 honors programs, or activities available at or through the educational institution.

13 **(10) "Sexual orientation" means heterosexuality, homosexuality, or bisexuality.**

14 **(11) "Association with a person or group with these actual or perceived**
15 **characteristics" includes advocacy for, identification with, or being on the** ground
16 owned or rented by, or adjacent to, any of the following: a community center,
17 educational facility, family, individual, office meeting hall, place of worship,
18 private institution, public agency, library, or other entity, group, or person that
19 has, or is identified with people who have, one of more of the characteristics
20 listed in Section 108.

21 **(12) "Volunteer" means an individual who has significant** contact with students,
22 associated with official school activities and with the approval of the school.

23 **(13) "School vehicle" means any school bus, school van, other school** vehicle and
24 private vehicle used to transport students or staff members to and from school or
25 any school-sponsored activity or event, with the approval of the school.

26

27 **Section 107. Prohibition against bullying, harassment and**
28 **intimidation.**

29 (1) A member of the board of trustees of a school district, any employee of the
30 school district, including, without limitation, an administrator, principal, teacher
31 or other staff member, or any pupil shall not engage in bullying, cyber-bullying,
32 harassment or intimidation on the premises of any public school, at an activity
33 sponsored or approved by a public school or school district or on any school
34 vehicle.

1 (2) Nothing in this Article shall be construed to require an exhaustion of the
2 administrative complaint process before civil or criminal law remedies may be
3 pursued regarding bullying, harassing or intimidating behavior.

4
5 **Section 108. Prohibition against discrimination.**

6 (1) No person may, on the **basis of that person's actual or perceived race**, color,
7 religion, ancestry, national origin, gender, socioeconomic status, academic status,
8 gender identity, marital status, political party preference, political belief, familial
9 status, physical appearance, sexual orientation or mental, physical,
10 developmental or sensory disability, or on the basis of association with a person
11 or persons having or perceived to have any of these characteristics, be denied
12 admission to any public school or be denied participation in, be excluded from,
13 be expelled, be denied the benefits of or be discriminated against in any
14 curricular, extracurricular, pupil services, recreational or other program or
15 activity, including, but not limited to:

16 (a) any academic, extracurricular, research, occupational training or other
17 program or activity;

18 (b) athletic programs;

19 (c) access to information about an institution or program through
20 recruitment;

21 (d) the availability of financial assistance and opportunity.

22 (2) Unwarranted placement, in special education classes or alternative schools, of
23 persons with the characteristics listed in paragraph (1) of this Section, on the
24 basis of those characteristics, is also discrimination.

25 (3) Nothing in this Article shall be construed to require an exhaustion of the
26 administrative complaint process before civil or criminal law remedies may be
27 pursued regarding discrimination. A person against whom the discrimination is
28 **directed, or, if that person is a minor, that person's** parents or guardians, may
29 commence a civil action against an individual or school district.

30
31 **Section 109. Prohibition against discrimination on the basis of sexual**
32 **orientation or gender identity.**

33 (1) No person may, on the **basis of that person's actual or perceived sexual**
34 orientation or gender identity, or on the basis of association with a person or
35 persons having or perceived to have any of these characteristics, be denied
36 admission to any public school or be denied participation in, be excluded from,

1 be expelled, be denied the benefits of or be discriminated against in any
2 curricular, extracurricular, pupil services, recreational or other program or
3 activity, including, but not limited to:

4 (a) any academic, extracurricular, research, occupational training or other
5 program or activity;

6 (b) athletic programs;

7 (c) access to information about an institution or program through
8 recruitment; and

9 (d) the availability of financial assistance and opportunity.

10 (2) Unwarranted placement, in special education classes or alternative schools on
11 the basis of sexual orientation or gender identity is also discrimination.

12 (3) Nothing in this Article shall be construed to require an exhaustion of the
13 administrative complaint process before civil or criminal law remedies may be
14 pursued regarding discrimination. A person against whom the discrimination is
15 **directed, or, if that person is a minor, that person's** parents or guardians, may
16 commence a civil action against an individual or school district.

17

18 **Section 110. Prohibition against discrimination in curriculum and**
19 **permission to include positive information.**

20 (1) No teacher shall give instruction nor shall a state school board or education
21 authority or school district adopt any textbook, or other instructional materials
22 for use in the public schools which contains any matter reflecting adversely upon
23 persons on the basis of a characteristic listed in Section 108.

24 (2) At the discretion of each school district, instruction in the social sciences may
25 include a study of the role and contributions of specific groups of people in the
26 state, including, for example, a study of the roles and contributions of both men
27 and women, African Americans, Latino/a Americans, Asian Pacific Island
28 Americans, Native and Indigenous Americans, people of other ethnic groups, and
29 LGBT people, to the economic, political, and social development of the state and
30 the nation, with particular emphasis on portraying the role of these groups in
31 contemporary society.

1 **Section 111. Prohibition against the application of marital status**
2 **requirements to discriminate against persons on the basis of sexual**
3 **orientation.**

4 No school or school district may apply any rule concerning the actual or potential
5 family or marital status of a person to exclude any person from any program or
6 activity because of their sexual orientation.

7
8 **Section 112. Policies against bullying, harassment, and intimidation.**

9 (1) The school board of every public school district shall adopt policies to prevent
10 bullying, harassment and intimidation of students and educators.

11 (2) The policies shall:

12 (a) Clearly define conduct that constitutes bullying, harassment and
13 intimidation, using, without limitation, the definitions contained in Section 104;

14 (b) Clearly state that bullying, harassment and intimidation are against
15 state and school policy, while in school, on school equipment or property, in
16 school vehicles, on school buses, at designated school bus stops, at school-
17 sponsored activities, regardless of location, or at school-sanctioned events;

18 (c) Prohibit cyber-**bullying that disrupts or interferes with the school's**
19 **educational mission or interferes with a student's education, academic**
20 performance or ability to participate in, or benefit from, the services, activities, or
21 privileges provided by a school.

22 (d) Clearly state the consequences for engaging in the prohibited conduct,
23 which, if the consequences are to be applied to a student, may vary depending on
24 the age or grade of the student involved;

25 (e) Require that a school employee who has witnessed or has reliable
26 information that a pupil or another employee has been a victim of bullying,
27 harassment or intimidation as defined by the district shall report the incident to
28 the principal or to a person designated by the principal to receive the
29 information;

30 (f) Require that the person or persons who file a complaint will not be
31 subject to retaliation or reprisal in any form;

32 (g) Require that notice of the definitions of bullying, harassment and
33 intimidation, along with the fact that such behavior is prohibited, and the
34 consequences of engaging in such behavior, be conspicuously posted in every
35 classroom, cafeteria, restroom, gymnasium, auditorium, and school bus in the
36 district;

1 (h) Require that notice of the definitions of bullying, harassment and
2 intimidation, along with the fact that such behavior is prohibited, and the
3 consequences of engaging in such behavior be provided to educators, students,
4 parents, school volunteers, and employees;

5 (i) Require that a full copy of the policy be made available upon request.

6 (j) Set out ways in which school districts and schools can train students,
7 administrators, educators, employees and volunteers on the prevention of
8 bullying, harassment and intimidation and provide opportunities for
9 participation in programs or other activities designed to develop the knowledge
10 and skills needed to prevent and respond to acts covered by these policies;

11 (k) Include a procedure for the prompt investigation of a report of
12 bullying, harassment or intimidation and the specific persons responsible for the
13 investigation. The investigation of a reported act of bullying or harassment is
14 deemed to be a school-related activity and begins with a report of such an act.
15 Incidents that require a reasonable investigation when reported to appropriate
16 school authorities shall include alleged incidents of bullying, harassment or
17 intimidation allegedly committed against a student while the student is aboard a
18 school vehicle or at a school bus stop;

19 (l) State that anonymous reports of bullying and harassment are sufficient
20 to trigger a prompt investigation but that no final action may be based solely on
21 an anonymous report;

22 (m) Include a process to investigate whether a reported act of bullying or
23 harassment is within the scope of the district school system and, if not, a process
24 for referral of such an act to the appropriate jurisdiction;

25 (n) Include a procedure for providing immediate notification to the
26 parents of a victim of bullying or harassment and the parents of the perpetrator
27 of an act of bullying or harassment, as well as notification to all local agencies
28 where criminal charges may be pursued against the perpetrator, if appropriate, so
29 long as the safety of the student who has been victimized is not jeopardized by
30 such reporting;

31 (o) Include a procedure for referring victims and perpetrators of bullying
32 or harassment for appropriate counseling;

33 (p) Set out a procedure for including incidents of bullying, harassment
34 and intimidation in any report of data concerning school safety and discipline.
35 The report must include each incident of bullying, harassment or intimidation
36 and the resulting consequences, including discipline and referrals. The report
37 must include, in a separate section, each reported incident of bullying,
38 harassment and intimidation that does not meet the criteria of a prohibited act

1 under this Section with recommendations regarding such incidents. The state
2 education authority shall aggregate the information contained in the reports;

3 (q) Include a **procedure for regularly reporting to a victim's parents any**
4 continuing actions taken to protect the victim;

5 (3) A school employee who has reported violations under the school **district's**
6 policy shall be immune from any tort liability that may arise from the failure to
7 remedy the reported incident.

8 (4) The school district shall file with the state education authority a copy of the
9 policies adopted in compliance with this Section.

10 (5) The state education authority shall review the policies provided by the school
11 districts and may recommend changes or improvements to the districts if the
12 state authority determines that the policies need improvement.

13 (6) To assist school districts in developing policies prohibiting bullying,
14 harassment and intimidation, the state education authority shall develop a model
15 policy and provide it to school districts.

16 (7) Nothing in this Section shall prohibit a local school administrative unit from
17 adopting a policy that includes components beyond the minimum components
18 provided in this Section or that is more inclusive than the requirements in this
19 Section.

20 (8) Nothing in this Article shall be construed to require an exhaustion of the
21 administrative complaint process before civil or criminal law remedies may be
22 pursued regarding bullying, harassing or intimidating behavior.

23
24 **Section 113. Policies against discrimination.**

25 (1) The school board of every public school district shall adopt policies to prevent
26 discrimination against students and employees on the bases set out in Section
27 108.

28 (2) The policies shall:

29 (a) Clearly state that discrimination on the bases set out in Section 108 is
30 against state and school policy;

31 (b) Provide that the person or persons who file a complaint will not be
32 subject to retaliation or reprisal in any form;

33 (c) Set out ways in which school districts and schools can train students,
34 administrators, educators, employees and volunteers on the prevention of
35 discriminatory behavior and provide opportunities for participation in programs

1 or other activities designed to develop the knowledge and skills to prevent and
2 respond to acts of discrimination.

3 (d) Include a procedure for the prompt investigation of a report of
4 discrimination and the specific persons responsible for the investigation. The
5 investigation of a reported act of discrimination is deemed to be a school-related
6 activity and begins with a report of such an act.

7 (e) Set out a procedure for including incidents of discrimination in any
8 report of data concerning school safety and discipline.

9 (3) A school employee who has reported violations under the school **district's**
10 policy shall be immune from any tort liability that may arise from the failure to
11 remedy the reported incident.

12 (4) The school district shall file with the state education authority a copy of the
13 policies adopted in compliance with this Section.

14 (5) The state education authority shall review the policies provided by the school
15 districts and may recommend changes or improvements to the districts if the
16 state authority determines that the policies need improvement.

17 (6) To assist school districts in developing policies prohibiting discrimination, the
18 state education authority shall develop a model policy and provide it to school
19 districts.

20 (7) Nothing in this Section shall prohibit a local school administrative unit from
21 adopting a policy that includes components beyond the minimum components
22 provided in this Section or that is more inclusive than the requirements in this
23 Section.

24 (8) Nothing in this Article shall be construed to require an exhaustion of the
25 administrative complaint process before civil or criminal law remedies may be
26 pursued regarding discriminatory behavior.

27

28 **Section 114. Policies against discrimination on the basis of sexual**
29 **orientation or gender identity.**

30 (1) The school board of every public school district shall adopt policies to prevent
31 discrimination against students and employees on the basis or sexual orientation
32 or gender identity.

33 (2) The policies shall:

34 (a) Clearly state that discrimination on the basis of sexual orientation or
35 gender identity is against state and school policy;

1 (b) Provide that the person or persons who file a complaint will not be
2 subject to retaliation or reprisal in any form;

3 (c) Set out ways in which school districts and schools can train students,
4 administrators, educators, employees and volunteers on the prevention of
5 discriminatory behavior related to sexual orientation or gender identity and
6 provide opportunities for participation in programs or other activities designed to
7 develop the knowledge and skills to prevent and respond to acts of discrimination
8 on the basis of sexual orientation or gender identity.

9 (d) Include a procedure for the prompt investigation of a report of
10 discrimination on the basis of sexual orientation or gender identity and the
11 specific persons responsible for the investigation. The investigation of a reported
12 act of discrimination on the basis of sexual orientation or gender identity is
13 deemed to be a school-related activity and begins with a report of such an act.

14 (e) State that anonymous reports of discrimination are sufficient to trigger
15 a prompt investigation but that no final action may be based solely on an
16 anonymous report;

17 (f) Set out a procedure for including incidents of discrimination on the
18 basis of sexual orientation or gender identity in any report of data concerning
19 school safety and discipline.

20 (3) A school employee who has reported violations under the school **district's**
21 policy shall be immune from any tort liability that may arise from the failure to
22 remedy the reported incident.

23 (4) The school district shall file with the state education authority a copy of the
24 policies adopted in compliance with this Section.

25 (5) The state education authority shall review the policies provided by the school
26 districts and may recommend changes or improvements to the districts if the
27 state authority determines that the policies need improvement.

28 (6) To assist school districts in developing policies prohibiting discrimination on
29 the basis of sexual orientation or gender identity, the state education authority
30 shall develop a model policy and provide it to school districts.

31 (7) Nothing in this Section shall prohibit a local school administrative unit from
32 adopting a policy that includes components beyond the minimum components
33 provided in this Section or that is more inclusive than the requirements in this
34 Section.

35 (8) Nothing in this Article shall be construed to require an exhaustion of the
36 administrative complaint process before civil or criminal law remedies may be
37 pursued regarding discriminatory behavior.

1 **Section 115. Professional conduct by educators regarding bullying,**
2 **harassment, intimidation and discrimination.**

3 (1) In fulfilling obligations to students, an educator:

4 (a) may not deliberately distort, suppress, or deny access to curricular
5 materials or educational information in order to promote the personal view,
6 interest, or goal of the educator;

7 (b) shall make reasonable effort to protect students from conditions
8 harmful to learning or to health and safety;

9 (c) may not engage in physical abuse of a student or sexual conduct with a
10 student and shall report to the person designated by the school or school district
11 such an act by an educator;

12 (d) may not willfully expose a student to embarrassment or
13 disparagement;

14 (e) may not harass, discriminate against, or grant a discriminatory
15 advantage to a student on the grounds of actual or perceived race, color, religion,
16 ancestry, national origin, gender, socioeconomic status, academic status, gender
17 identity, marital status, political party preference, political belief, familial status,
18 physical appearance, sexual orientation or mental, physical, developmental or
19 sensory disability, or on the basis of association with a person or persons having
20 or perceived to have any of these characteristics;

21 (f) shall make reasonable efforts to assure that a student is protected from
22 harassment or discrimination on these grounds; and may not engage in a course
23 of conduct that would encourage a reasonable student to develop a prejudice on
24 these grounds;

25 (g) shall keep in confidence information that has been obtained in the
26 course of providing professional service, unless disclosure serves a compelling
27 professional purpose or is required by law;

28 (h) shall accord just and equitable treatment to all students as they
29 exercise their educational rights and responsibilities.

30 (2) In fulfilling obligations to the profession, an educator:

31 (a) may not, on the basis of actual or perceived race, color, religion,
32 ancestry, national origin, gender, socioeconomic status, academic status, gender
33 identity, marital status, political party preference, political belief, familial status,
34 physical appearance, sexual orientation or mental, physical, developmental or
35 sensory disability, or on the basis of association with a person or persons having
36 or perceived to have any of these characteristics, deny to a colleague a
37 professional benefit, advantage, or participation in any professional organization,

1 and may not discriminate in employment practice, assignment, or personnel
2 evaluation;

3 (b) shall accord just and equitable treatment of all members of the
4 profession in the exercise of their professional rights and responsibilities;

5 (c) may not use coercive means or promise special treatment in order to
6 influence professional decisions of colleagues;

7 (d) may not bully, intimidate, harass or sexually harass a fellow employee;

8 (e) shall withhold and safeguard information acquired about colleagues in
9 the course of employment, unless disclosure serves a compelling professional
10 purpose;

11 (f) shall provide, upon the request of the affected party, a written
12 statement of specific reasons for recommendations that led to the denial of
13 increments, significant changes in employment, or termination of employment;

14 (g) may not deliberately misrepresent the educator's or another's
15 professional qualifications;

16 (h) may not seek reprisal against any individual who has filed a complaint,
17 provided testimony or given other assistance in support of a complaint filed with
18 the appropriate entity;

19
20 **Section 116. Education and training on bullying, harassment and**
21 **intimidation.**

22 (1) The state school authority shall develop model educational programs for
23 school administrators, teachers, coaches, school staff, parents, volunteers and
24 students designed to acquaint them with the provisions of school policies against
25 bullying, harassment, and intimidation, and setting forth examples of
26 appropriate responses to acts of harassment, intimidation and bullying and acts
27 of cyber bullying.

28 (2) The training model may also include promotion of conflict resolution and
29 mediation techniques for resolving conflicts between and among pupils without
30 violence, including dating violence and interpersonal violence.

31 (3) School districts are encouraged to utilize the model educational programs
32 designed by the state school authority by incorporating them into existing
33 training programs.

34 (4) School districts are encouraged to form task forces and to implement
35 programs and other initiatives that are aimed at the prevention of, and the

1 appropriate response to, acts of harassment, intimidation or bullying and acts of
2 cyber bullying.

3

4 **Section 117. Education and training on discrimination.**

5 The state school authority shall develop model educational programs for school
6 administrators, teachers, coaches, school staff, parents, volunteers and students
7 designed to acquaint them with the provisions of school policies against
8 discrimination on all the bases set forth in Section 108 and giving examples of
9 discriminatory behaviors that are prohibited.

10

11 **Section 118. Education and training on discrimination based on**
12 **sexual orientation and gender identity.**

13 The state school authority shall develop model educational programs for school
14 administrators, teachers, coaches, school staff, parents, volunteers and students
15 designed to acquaint them with the provisions of school policies against
16 discrimination based on sexual orientation and gender identity and giving
17 examples of discriminatory behaviors that are prohibited.

18

19 **Section 119. Requirements for the state teaching credential**
20 **concerning bullying, harassment and intimidation.**

21 In developing the requirements that lead to a state teaching or administrative
22 credential, the state credentialing authority is encouraged to require satisfactory
23 completion of classes related to understanding bullying, discrimination and
24 harassment.

25

26 **Section 120. Requirements for the state teaching credential**
27 **concerning discrimination.**

28 In developing the requirements that lead to a state teaching or administrative
29 credential, the state credentialing authority is encouraged to require satisfactory
30 completion of classes related to understanding discrimination based on the
31 characteristics set forth in Section 108.

1 **Section 121. Requirements for the state teaching credential**
2 **concerning bullying, harassment, intimidation and discrimination**
3 **based on sexual orientation and gender identity.**

4 In developing the requirements that lead to a state teaching or administrative
5 credential, the state credentialing authority is encouraged to include satisfactory
6 completion of classes related to understanding bullying, discrimination,
7 harassment and discrimination based on sexual orientation and gender identity.

Notes and References

¹This brief uses the acronym most typically employed by those addressing gay and transgender issues at this point in time: LGBT (referring to lesbian, gay, bisexual, and transgender). Other acronyms and a range of terms are in use and definitions can vary considerably.

To avoid repetition but maintain stylistic consistency, the brief often uses ‘LGBT’ and ‘gay and gender-non-conforming’ interchangeably, as synonyms for the same groups of people.

² These mandates are reflected in legal doctrine addressing K-12 public school safety in every state, under principles derived from negligence law, threat law, and harassment law. See generally Biegel, S. (2009). *Education and the law* (pp. 12-46, 71-95, 226-249, 261-302). St. Paul, MN: West.

³ Donelson, R. & Rogers, T. (2004). Negotiating a research protocol for studying school-based gay and lesbian issues. *Theory into Practice*, *43*(2), 128-135.

⁴ Saillant, C. & Covarrubias, A. (2008, February 15). Oxnard shooting called a hate crime. *Los Angeles Times*. Retrieved September 14, 2010, from <http://www.latimes.com/news/local/la-me-oxnard15feb15,0,7663055.story>.

⁵ Blow, C. (2009, April 24). Two little boys. *New York Times*. Retrieved September 16, 2010, from <http://blow.blogs.nytimes.com/2009/04/24/two-little-boys>.

⁶ In an appearance on CNN, Carl Walker-Hoover’s mother, Sirdeaner Walker, said of her son, “Some people may say he was flamboyant. He was very dramatic.” CNN correspondent Randi Kaye added, “Sirdeaner Walker says she never asked her son if he was gay, but she says students called him gay and feminine and told him, ‘You act gay.’” Hostage hero home; “Torture Memo” backlash; bullying and suicide; Twitter showdown. (2009, April 17). *Anderson Cooper 360 Degrees*. Retrieved September 16, 2010, from <http://transcripts.cnn.com/TRANSCRIPTS/090417/acd.02.html>.

⁷ Pearson, J., Muller, C. & Wilkinson, L. (2007). Adolescent same-sex attraction and academic outcomes: The role of school attachment and engagement. *Social Problems*, *54*(4), 523-542.

For additional context and an examination of these realities at the postsecondary level, see Rankin, S. (2007). Campus climate for sexual minorities. In M. V. L. Badgett & J. Frank (Eds.), *Sexual orientation discrimination: An international perspective* (pp. 236-252). New York: Routledge.

⁸ For recent examples of studies showing the effects of mistreatment on LGBT students, see the following:

Greytak, E. A., Kosciw, J. G. & Diaz, E. M. (2009). Harsh realities: The experiences of transgender youth in our nation’s schools. **Gay, Lesbian and Straight Education Network Iowa Pride Network**. Retrieved May 3, 2010, from http://www.glsen.org/binary-data/GLSEN_ATTACHMENTS/file/000/001/1375-1.pdf.

Iowa Pride Network. (2009). The 2009 Iowa school climate survey: The experiences of lesbian, gay, bisexual and transgender youth in Iowa’s schools. Retrieved May 3, 2010, from http://www.essentialestrogen.com/pdf/IPN_2009_school_climate.pdf.

⁹ National Mental Health Association. Bullying in schools: Harassment puts gay youth at risk. Retrieved September 22, 2008, from <http://www.nmha.org/go/information/get-info/children-s-mental-health/bullying-and-gay-youth>.

¹⁰ Tomsho, R. (2003, February 20). **Schools' efforts** to protect gays face opposition. *Wall Street Journal*, p. B-1, where data revealing the extent to which students who are LGBT or thought to be LGBT are bullied is included in a table accompanying the article.

¹¹ See Wagner, D. (2010). Nowhere to go: Issue brief on gay and transgender youth homelessness. Center for American Progress. Retrieved August 22, 2010, from http://www.americanprogress.org/issues/2010/08/homelessness_brief.html.

See also Ray, N. (2006). Lesbian, gay, bisexual and transgender youth: An epidemic of homelessness. National Gay and Lesbian Task Force. Retrieved May 3, 2010, from <http://www.thetaskforce.org/downloads/HomelessYouth.pdf>.

¹² Russell, S. T. (2003). Sexual minority youth and suicide risk. *American Behavioral Scientist*, *46*, 1241-1257.

See also Massachusetts Department of Education. (2007). 2005 youth risk behavior survey: Survey results. Retrieved July 27, 2010 from: <http://www.doe.mass.edu/cnp/hprograms/yrbs/05/ch6.pdf>.

¹³ Biegel, S. (2010). *The right to be out: Sexual orientation and gender identity in America's public schools*. Minneapolis, MN: University of Minnesota Press.

¹⁴ *Nabozny v. Podlesny*, 92 F.3d 446 (7th Cir. 1996).

¹⁵ *Flores v. Morgan Hill USD*, 324 F.3d 1130 (9th Cir. 2003). See also ACLU, LGBT Rights & HIV/AIDS: Schools & Youth. (2004, January 6). Case background: *Flores v. Morgan Hill USD*. Retrieved April 11, 2008, from http://www.aclu.org/lgbt-rights_hiv-aids/case-background-flores-v-morgan-hill-unified-school-district.

¹⁶ *Flores v. Morgan Hill USD*, 324 F.3d 1130 (9th Cir. 2003). See also ACLU, LGBT Rights & HIV/AIDS: Schools & Youth. (2004, January 6). Case background: *Flores v. Morgan Hill USD*.

¹⁷ *Boyd County High School (BCHS) Gay Straight Alliance v. Bd. of Ed.*, 258 F. Supp. 2d 667 (E.D. Ky. 2003).

¹⁸ *Ramirez v. LAUSD Complaint*. (2004). Retrieved May 12, 2008, from www.gsanetwork.org/press/washingtonprep_complaint.pdf.

¹⁹ *Ramirez v. LAUSD Complaint*. (2004), 12-13. The students were not allowed to return to class, and had to spend over two and a half hours with the dean, after which they were both suspended for two days.

²⁰ *Gillman v. Sch. Bd. for Holmes County, Fla.*, 567 F. Supp. 2d 1359 (N.D. Fla. 2008).

²¹ *Gillman v. Sch. Bd. for Holmes County, Fla.*, 567 F. Supp. 2d 1359, 1365-1370 (N.D. Fla. 2008).

²² *Gillman v. Sch. Bd. for Holmes County, Fla.*, 567 F. Supp. 2d 1359, 1365-1370 (N.D. Fla. 2008). See also *J.L. v. Mohawk Cent. Sch. Dist.* (N.D.N.Y. 2010), another recent case documenting a similar pattern of peer mistreatment and complicity by school officials. Settlement Agreement retrieved August 22, 2010, from http://www.nyclu.org/files/JL_Approved_Settlement_Order_3.29.10.pdf.

²³ Kosciw, J.G., Diaz, E. M. & Greytak, E. A. (2008). 2007 National School Climate Survey: The experiences of lesbian, gay, bisexual and transgender youth in our nation's schools. *Gay, Lesbian and Straight Education Network*. Retrieved July 2, 2010, from <http://www.glsen.org/cgi-bin/iowa/all/news/record/2340.html>.

²⁴ Ryan, C. C. & Futterman, D. (1998). *Lesbian and gay youth: Care and counseling*. New York: Columbia University Press.

D'Augelli, A. R. & Patterson, C. J. (2001). *Lesbian, gay, and bisexual identities and youth: Psychological perspectives*. Oxford, England: Oxford University Press.

Kim, R., Sheridan, D. & Holcomb, S. (2009). A report on the status of gay, lesbian, bisexual, and transgender people in education: Stepping out of the closet, into the light. National Education Association. Retrieved September 16, 2010, from <http://www.nea.org/assets/docs/glbstatus09.pdf>.

This document, the fifth in a series of NEA reports on the status of underserved groups in education, follows the same pattern as the previous four, drawing on the proceedings of a national summit “that brought together researchers, community, and NEA members...The content of the report derives largely from the presentations and research of more than 25 scholars and education employees from the United States and Canada who convened for the two-day summit in Chicago, Illinois, in July 2008.” Ibid. at iv.

²⁵ Poteat, V. P., Espelage, D. L. & Koenig, B. W. (2009). Willingness to remain friends and attend school with lesbian and gay peers: Relational expressions of prejudice among heterosexual youth. *Journal of Youth and Adolescence*, *38*, 952–962.

²⁶ Pascoe, C. J. (2007). *Dude you're a fag: Masculinity and sexuality in high school*. Berkeley, CA: University of California Press.

²⁷ Munoz-Plaza, C., Quinn, S. C. & Rounds, K. A. (2002). Lesbian, gay, bisexual and transgender students: Perceived social support in the high school environment. *The High School Journal*, *85*(4), 52-63.

²⁸ Kumashiro, K. (2003). *Restored selves: Autobiographies of queer Asian-Pacific American activists*. New York: Routledge.

²⁹ Cianciotto, J. & Cahill, S. (2003). Education policy: Issues affecting lesbian, gay, bisexual, and transgender youth. The National Gay and Lesbian Task Force Policy Institute. Retrieved September 16, 2010, from <http://www.thetaskforce.org/downloads/reports/reports/EducationPolicy.pdf>.

³⁰ Diaz, E. M. & Kosciw, J. G. (2009). Shared differences: The experiences of lesbian, gay, bisexual, and transgender students of color in our nation's schools. *Gay, Lesbian and Straight Education Network*. Retrieved August 3, 2010, from http://www.glsen.org/binary-data/GLSEN_ATTACHMENTS/file/000/001/1332-1.pdf.

Pilkington, N. W & D'Augelli, A. R. (1995). Victimization of lesbian, gay, and bisexual youth in community settings. *Journal of Community Psychology*, *23*(1), 34–56.

See also Kumashiro, K. (2001). Queer students of color and antiracist, antiheterosexist education: Paradoxes of identity and activism. In K. Kumashiro, *Troubling Intersections of Race and Sexuality*. Lanham, MD: Rowman & Littlefield. Kevin Kumashiro's scholarship, noteworthy for tackling issues impacting LGBT persons of color, is reflected in this collection of essays that represents a wide range of perspectives within diverse racial and ethnic communities. Kumashiro frames the inquiry by clarifying issues of identity formation and cultural development against the background of the story of the U.S. multicultural education movement, which in its first three decades failed to afford a prominent place to the interplay between sexual orientation, gender identity, and race/ethnicity.

See generally McCreedy, L. T. (2004). Understanding the marginalization of gay and gender non-conforming black male students. *Theory Into Practice*, *43*(2), 136-143.

³¹ Horn, S. S., Kosciw, J. G. & Russell, S. T. (2009). Special issue introduction: New research on lesbian, gay, bisexual, and transgender youth: Studying lives in context. *Journal of Youth and Adolescence*, 38, 863-866.

³² Kim, R., Sheridan, D. & Holcomb, S. (2009). A report on the status of gay, lesbian, bisexual, and transgender people in education: Stepping out of the closet, into the light. National Education Association. Retrieved September 16, 2010, from <http://www.nea.org/assets/docs/glbstatus09.pdf>.

See also Ryan, C., Huebner, D., Diaz, R. M. & Sanchez, J. (2009). Family rejection as a predictor of negative health outcomes in white and Latino lesbian, gay, and bisexual adults. *Pediatrics*, 123, 346–352.

³³ See, e.g. Fossey, R., DeMitchell, T. A. & Eckes, S. (2007). Sexual orientation and the public schools: The law is changing and becoming more humane. *Teachers College Record*. Retrieved July 29, 2010, from <http://www.tcrecord.org/Content.asp?ContentId=14654>.

³⁴ See generally Biegel, S. (2008). Court-mandated education reform: The San Francisco experience and the shaping of educational policy after Seattle-Louisville and *Ho v. SFUSD*. *Stanford Journal of Civil Rights & Civil Liberties*, 4(2), 159-215.

³⁵ Legislators, education policymakers, and school officials may find that certain approaches are better suited to their communities than others. Adopting even some of these recommendations can lead to improvement.

³⁶ Innovative scholarship exploring the boundaries and overlapping of multiple identities in this context has emerged in recent decades, with researchers identifying the potential for new paradigms. See, e.g., Wu, J. (2010). *An alternative is possible: A rebellious vision of intersectional lawyering*. Unpublished manuscript, UCLA School of Law, Los Angeles, CA.

See, e.g., Grady, J. & Marquez, R. (2010). *Rethinking revolutionary critical pedagogy: Queer youth of color creating dialogues of resistance*. Paper presented at the annual meeting of the American Educational Research Association, Denver, CO.

See generally Crenshaw, K. (1989). Demarginalizing the intersection of race and sex: A black feminist critique of antidiscrimination doctrine, feminist theory, and antiracist politics. *University of Chicago Legal Forum*, 1989, 139-167.

See generally Robinson, R. K. (2009). Racing the closet. *Stanford Law Review*, 61, 1463-1533.

³⁷ The basic principles linking student freedom of expression to campus safety in the K-12 public schools are set forth in *Tinker*, where the U.S. Supreme Court held that First Amendment rights are explicitly made available to public school students, **subject to limitations that arise out of the “special characteristics of the school environment.”** *Tinker v. Des Moines Indep. Commun. Sch. Dist.*, 393 U.S. 503 (1969). **See also** *Ponce v. Socorro Indep. Sch. Dist.*, 508 F.3d 765 (5th Cir. 2007), which built on the jurisprudence of *Tinker* and its progeny in this context. In *Ponce*, the Fifth Circuit determined that in the aftermath of the tragic events at Columbine in 1999 and in light of the U.S. Supreme Court’s 2007 decision in *Morse v. Frederick*, 551 U.S. 393 (2007), “the heightened vulnerability of students arising from the lack of parental protection and the close proximity of students with one another make schools places of ‘special danger’ to the physical safety of the student. And it is this particular threat that functions as the basis for restricting the First Amendment in schools: school officials must have greater authority to intervene before speech leads to violence.” *Ibid.* at 770.

For a detailed overview of K-12 First Amendment jurisprudence since 1969, and an analysis of recent decisions and trends, see generally Biegel, S. (2009). *Education and the law* (pp. 127-186, 261-278). St. Paul, MN: West.

³⁸ See *Nuxoll v. Indian Prairie Sch. Dist. #204 Bd. of Educ.*, 523 F.3d 668 (7th Cir. 2008), a recent decision where the Seventh Circuit Court of Appeals, per Judge Richard Posner, upheld the constitutionality of a policy that sought to improve school climate by prohibiting “derogatory comments that refer to race, ethnicity, religion, gender, sexual orientation, or disability.” *Ibid.* at 669-674.

Although the key finding of the court most relevant to the guiding principles of this policy brief is that the “derogatory comments” policy was found to be constitutional under the First Amendment, the appellate panel determined that the T-shirt at issue in the case was not violative of this policy. The shirt read “Be Happy, Not Gay,” which the court found to be “only tepidly negative,” concluding that it was “highly speculative” that allowing plaintiff to wear such a shirt “would have even a slight tendency to provoke [harassment], or for that matter to poison the educational atmosphere.” *Ibid.* at 675-676.

It is important to underscore just how strongly and emphatically the *Nuxoll* court upheld the constitutionality of the policy. Judge Posner emphasized that the policy only prohibited *derogatory comments* “on unalterable or otherwise deeply rooted personal characteristics about which most people, including--perhaps especially including--adolescent schoolchildren, are highly sensitive.” He acknowledged that “[p]eople are easily upset by comments about their race, sex, etc., including their sexual orientation, because for most people these are major components of their personal identity—none more so than a sexual orientation that deviates from the norm. Such comments can strike a person at the core of his being.” *Nuxoll*, 523 F.3d at 669-674. The Court found the policy to be viable, appropriate, and consistent with principles set forth in *Bethel v. Fraser* and *Morse v. Frederick*. It suggested that the school is on strong ground “in arguing that the rule strikes a reasonable balance between the competing interests--free speech and ordered learning--at stake in the case.” Construing *Morse* as potentially enabling educators to restrict speech that may have negative “psychological effects,” Posner wrote that “if there is reason to think that a particular type of student speech will lead to a decline in students’ test scores, an upsurge in truancy, or other [similar] symptoms . . . of substantial disruption[,] the school can forbid the speech”:

The rule challenged by the plaintiff appears to satisfy this test. It seeks to maintain a civilized school environment conducive to learning, and it does so in an even-handed way. . . . The list of protected characteristics in the rule appears to cover the full spectrum of highly sensitive personal-identity characteristics. And the ban on derogatory words is general. *Ibid.* at 674.

³⁹ Recent poll data and national survey results continue to support the conclusion that there has been a significant positive change in the attitudes of Americans toward LGBT educators. However, it remains the case that a substantial percentage of people--particularly in rural areas and certain regions of the country--continue to oppose the hiring of LGBT teachers. See Neidorf, S. & Morin, R. (2007). Four in ten Americans have close friends or relatives who are gay: Survey finds familiarity is closely linked to greater tolerance. Pew Research Center for the People & the Press. Retrieved September 18, 2009, from <http://pewresearch.org/pubs/485/friends-who-are-gay>.

In light of these realities, K-12 educators are still confronted with a combination of subtle pressure and express admonition, which limit their ability to be open about who they are. And too often such limitations continue to be reflected in job placement and promotion decisions that favor educators whose sexual orientations and gender identities appear to conform to mainstream norms. Public school educators may have the right to be out under the law, but in day-to-day educational practice--particularly in certain communities--that right may be severely curtailed. See generally Biegel, S. (2009). Conceptualizing the parameters of the right to be out. In S. Biegel, *Education and the law* (pp. 169-186). St. Paul, MN: West.

See also Jackson, J. (2007). *Unmasking Identities: An exploration of the lives of gay and lesbian teachers*. Lanham, MD: Lexington Books.

⁴⁰ See Association for Supervision & Curriculum Development. School culture and climate. Retrieved July 30, 2007, from www.ascd.org.

⁴¹ When there is tension in an education setting between individuals or groups, policies and practices geared toward identifying areas of common ground represent the best of what public education and American values are supposed to be about. Research-based approaches that have been employed in this area to build and maintain a positive school climate apply not only to LGBT issues but to all students and to every level of interaction. Everyone benefits from a nurturing school environment where all students are provided the same level of understanding and support. See generally Marshall, M. L. (2004). Examining school climate: Defining factors and educational influences. Georgia State University Center for School Safety, School Climate, and Classroom Management. Retrieved May 14, 2008, from <http://education.gsu.edu>.

⁴² Such students--vulnerable and at-risk--are often among the first to be negatively impacted by a less-than-supportive school climate, which can lead them to either stop coming to school regularly or to simply drop out. The same students, situated in a positive and encouraging environment, can be among the greatest beneficiaries of these changes. Liddell, H. (2006, June 26). Special Assistant to the Superintendent, San Francisco Unified School District. Interview.

See also Meyers, E. (2009). Gender, bullying, and harassment: Strategies to end sexism and homophobia in schools. New York, NY: Teachers College Press.

⁴³ See, e.g., Black, S. (2006). Respecting differences: Diverse learners can blossom in culturally responsive classrooms. *The American School Board Journal*, 193(1), 34-37 (documenting the importance for educators of learning the cultural and social characteristics of their students).

See, e.g., Raffaele Mendez, L. M. & Knopf, H. (2003). Who gets suspended from school and why: A demographic analysis of schools and disciplinary infractions in a large school district. *Education and Treatment of Children*, 26(1), 30-51.

See also Townsend, B. (2000). Disproportionate discipline of African American children and youth: Culturally-responsive strategies for reducing school suspensions and expulsions. *Exceptional Children*, 66(3), 381–391 (focusing on African-American youth, but setting forth principles which are also expressly applicable to others experiencing cultural discontinuity, including not only LGBT youth generally but LGBT students of color in particular).

Russell Skiba adds that “[i]n many secondary classrooms, cultural discontinuity or misunderstanding may create a cycle of miscommunication and confrontation. . . . [In addition,] teachers who are prone to accepting stereotypes of . . . [certain students] . . . as threatening or dangerous may overreact to relatively minor threats to authority, especially if their anxiety is paired with a misunderstanding of cultural norms of social interaction.” Skiba, R. J., Michael, R. S., Carroll Nardo, A., & Peterson, R. L. (2002). The color of discipline: Sources of racial and gender disproportionality. *Urban Review*, 34(4), 317-342.

⁴⁴ *Nabozny v. Podlesny*, 92 F.3d at 452. It is not clear from the Seventh Circuit decision what justification was given for placing Nabozny in Special Education. No additional facts are presented in the briefs on behalf of the appellant. However, the briefs do allege that the special education placement was part of a larger pattern: “[The placement] was part of a pattern that highlighted the school’s message to students that abuse of a boy because he is gay would be accommodated at his expense, not the perpetrators’ expense. The pattern included placing Jamie in different classes, placing him in a separate part of the bus, placing him in the special education class and forcing him to use a separate bathroom. Such affirmative acts by the school emphasized the message that Jamie was unworthy of respect and worthy of further abuse.” Brief of Appellant, *Nabozny v. Podlesny*, No. 95-3634 (7th Cir. Dec. 18, 1995). Retrieved April 28, 2008, from <http://www.lambdalegal.org/our-work/in-court/briefs/nabozny-v-podlesny-2.html>.

⁴⁵ See *Henkle v. Gregory*, 150 F. Supp. 2d 1067 (D. Nev. 2001). **As a result of this placement, Henkle “could not receive a high school diploma because he was no longer enrolled in a public high school.”**

⁴⁶ **In today’s special education system, a variety of options and organizational structures** exist, ranging from separate classes for students with disabilities (typically called “special day classes”) to inclusion (where students are generally placed in heterogeneous settings but are provided with additional support in those settings) and resource specialist programs (RSP, where students are grouped together with everyone else for part of the time). But reports documenting special education practices nationwide have found that too often, apparently in violation of express provisions of the Individuals with Disabilities Education Act (IDEA), requiring that students with disabilities be **segregated “only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily”** (20 U.S.C. §1412), many students are separated out into special day classes for the entire day and often for their entire public school careers. Biegel, S. (2009). Special education and other programs for students with disabilities. In S. Biegel, *Education and the law* (pp. 549-551). St. Paul, MN: West.

Nationwide, researchers and practitioners continue to report that students of color are disproportionately represented in special education and that they are much more likely than their white counterparts to end up in special day classes, separated out from their peers for the entire school day. See generally Losen, D. & Welner, K. G. (2001). Disabling discrimination in our public schools: Comprehensive legal challenges to inappropriate and inadequate special education services for minority children. *Harvard Civil Rights-Civil Liberties Law Review*, 36(2), 407-460. This is especially true for African American and Latino students in urban education environments. See, e.g., Artiles, A. J., Harris-Murri, N., & Rostenberg, D. (2006). Inclusion as social justice: Critical notes on discourses, assumptions, and the road ahead. *Theory Into Practice*, 45(3), 260-268.

⁴⁷ See, e.g., Buhs, E., Ladd, G., & Herald, S. (2006). Peer exclusion and victimization: Processes that mediate the **relation between peer group rejection and children’s classroom engagement and achievement**. *Journal of Educational Psychology*, 98(1), 1-13 (identifying the effect of peer exclusion on school achievement).

⁴⁸ See, e.g., Skiba, R. J., Simmons, A. B., Ritter, S., Kohler, K., Henderson, M., & Wu, T. (2006). The context of minority disproportionality: Practitioner perspectives on special education referral. *Teachers College Record*, 108(7), 1424-1459.

⁴⁹ See, e.g., Cohen, J. (2006). Social, emotional, ethical, and academic education: Creating a climate for learning, participation in democracy, and well-being. *Harvard Educational Review*, 76(2), 201-237.

⁵⁰ Broad, general programs of this nature that are being implemented in Districts throughout the country include PATHS (Promoting Alternative Thinking Strategies) for Grades K-6, Project Achieve for Pre-K through Grade 8, and the Tribes Learning Communities for all grade levels. Information about PATHS can be found at <http://www.colorado.edu/cspv/blueprints/model/programs/PATHS.html>, Project Achieve at <http://www.projectachieve.info>, and the Tribes Learning Communities at <http://www.tribes.com>.

⁵¹ Bullying is generally defined as behavior ranging from name-calling, threats, and social exclusion to serious criminal acts of libel and repeated physical attacks. Pervasive bullying is perhaps best seen as a type of peer harassment and mistreatment, and it continues to negatively affect persons of every race, ethnicity, gender, and sexual identity. Indeed, there is evidence that bullying is more prevalent and more of a problem today than it has been in the past. During the past decade state education departments and the National Education Association (NEA) devoted considerable time and effort to developing materials and model policies in this area. NEA efforts were exemplified by the work of Robert Kim, who organized a national summit on LGBT issues in 2008. See Kim, R.,

Sheridan, D. & Holcomb, S. (2009). A report on the status of gay, lesbian, bisexual, and transgender people in education: Stepping out of the closet, into the light. National Education Association. Retrieved September 16, 2010, from <http://www.nea.org/assets/docs/glbstatus09.pdf>.

The Center for the Prevention of Hate Violence is a noteworthy example of an organization that coordinates training and educational programs designed to combat bullying and other forms of hate-related activity. Located in New England, the Center works with businesses, non-profit organizations, schools, colleges, law enforcement agencies and other institutions to prevent bias, harassment and violence. Wessler, S. (2008, April 16). Executive Director, Center for the Prevention of Hate Violence. Interview. Information about the Center for the Prevention of Hate Violence is available at <http://www.preventinghate.org>.

Such programs can help LGBT students facing severe challenges on a day-to-day level.

⁵² Wellness programs designed to assist LGBT people of color by addressing the unique combination of needs and challenges that many face include **Imagenes Positivas**, a Spanish-language version of the L.A. Gay and Lesbian **Center's Positive Images program**, and the **Asian and Pacific Islander Wellness Center** in San Francisco. While not school-based per se, the program coordinators work hand-in-hand with local educational institutions, providing valuable materials as well as on-site presentations.

⁵³ Scholarly literature has documented the benefits of gay-straight alliances for all students. For instance, a 2009 study building on past research explores how youth define and experience empowerment in youth-led organizations characterized by social justice goals. In so doing, the study offers insights into the ways that empowerment may be experienced differently among youth as compared to adults. See Russell, S. T., Muraco, A., Subramaniam, A., & Laub, C. (2009). Youth empowerment and high school gay-straight alliances. *Journal of Youth & Adolescence*, *38*(7), 891-903.

Related scholarship has examined the importance of teacher mentoring in the lives of LGBT youth, focusing in particular on **“how significant teacher-mentors are to the educational resilience of sexual minority women of color.”** See Gastic, B. & Johnson, D. (2009). Teacher-mentors and the educational resilience of sexual minority youth. *Journal of Gay & Lesbian Social Services*, *21*(2-3), 219-231. The faculty advisor in a gay-straight alliance is often able to serve as a mentor, enhancing **the student organization's potential for positive impact.**

GLSEN, the Gay, Lesbian & Straight Education Network, has played a prominent role in the formation of these alliances. The New York-based organization continues to provide a wealth of programmatic resources for K-12 educators, ranging from additional materials regarding safe zones and gay-straight alliances to national days of unity **such as the “National Coming Out Day” and the “Day of Silence.”** GLSEN also provides professional-development materials for in-class activities, lessons, and curriculum. See generally www.glsen.org.

The California-based Gay-Straight Alliance Network has also contributed extensively to the work in this area. It has gathered together an extensive collection of resources, ranging from steps that can be taken to form and maintain gay-straight alliances to programs empowering LGBT youth and their allies to help counter discrimination in this context. A particularly noteworthy example of this work is *Take It Back: A Manual for Fighting Slurs on Campus*. Tides Center & Gay-Straight Alliance Network. (2003). *Take it back: A manual for fighting slurs on campus*. Retrieved June 7, 2008, from <http://gsanetwork.org/files/getinvolved/TakeItBack-Manual.pdf>.

⁵⁴ One of the basic requirements of NCLB is that education officials develop and implement statewide curricular content standards. See, e.g., The NCLB Statement of Purpose, 20 U.S.C. § 6301.

Possible coverage of LGBT-related content pursuant to these standards can be discerned from several relevant classroom scenarios in the social studies field. In California, for example, Standard 11.10, No. 4 mandates “**examin[ing] the roles of civil rights advocates.**” This can include the dramatic story of Bayard Rustin, who worked closely with Martin Luther King and organized the legendary March on Washington but was almost forced out of the civil rights movement on several occasions because of his sexual orientation. Standard 11.11, No. 7 requires educators to “**explain how . . . government(s) have responded to demographic and social changes such as population shifts.**” This can provide an opportunity for teachers to discuss the impact of LGBTs on urban planning, development, and renewal, focusing on the extent to which areas of major U.S. cities such as the Castro and West Hollywood have been renovated, rebuilt, and in many instances transformed by gay residents and gay businesses. And Standard 11.7, No. 5 requires teachers to “**discuss the . . . response of the [Roosevelt] administration to Hitler’s atrocities against the Jews and other groups.**” Too often, the extent to which Hitler’s atrocities included the persecution, torture, and brutal murder of gay people is left out of the history books.

⁵⁵ Research findings have consistently demonstrated that when LGBT issues are discussed openly in classrooms within the context of the curriculum, not only does the pervasive negative influence of heteronormativity begin to fade, but students who view these issues as irrelevant and/or unmentionable begin to be more comfortable and accepting of the concept of equal treatment for their gay and gender-non-conforming peers. In addition, to the extent that LGBT students and even educators are able to be out in these settings, the literature has shown over and over again that such ongoing personal contact invariably leads to a more collaborative and supportive school climate. See, e.g., Guerra, N. G., & Phillips Smith, E.(Eds.). (2005). *Preventing youth violence in a multicultural society*. Washington, D.C.: APA Books.

See generally Perrotti J. & Westheimer, K. (2001). *When the drama club is not enough*. Boston: Beacon Press.

⁵⁶ Ongoing professional development for both teachers and school-site administrators is one of the most important steps that a school district can take to maintain a positive, supportive school climate for all students. It is particularly important with regard to gay and gender-non-conforming issues, and indeed many court orders, consent decrees, and settlements addressing best practices in an LGBT context have relied to a great extent on professional development. See, e.g., Joslin, C. & Manke, E. National Center for Lesbian Rights & Gay, Lesbian and Straight Education Network. **Fifteen Expensive Reasons Why Safe Schools Legislation Is in Your State’s Best Interest**. Retrieved August 8, 2008, from <http://www.nclrights.org/site/DocServer/15reasons.pdf?docID=1621>.

⁵⁷ See Hawley, W. & Valli, L. (1999). The essentials of effective professional development. In L. Darling-Hammond & G. Sykes (Eds.). *Teaching as the learning profession: Handbook of policy and practice* (pp. 151-180). San Francisco: Jossey-Bass.

Maldonado, L. (2002). Effective professional development: Findings from research. The College Board. Retrieved June 11, 2006, from http://www.collegeboard.com/prod_downloads/ipeAPC/ap05_profdev_effectiv_41935.pdf

⁵⁸ School officials should be aware that such sessions inevitably touch on topics that some find highly controversial. It might therefore be beneficial to collaboratively work out approaches for addressing LGBT issues if faculty and staff are not comfortable with the subject. Some people have found useful the *legal compliance* approach (emphasizing the responsibility to comply with the law and treat all students the same), the *responsible-for-every-student* approach (stressing that whether one agrees or disagrees with the law, teachers have a moral obligation to help everyone equally), and the *golden rule* approach (emphasizing kindness toward others and the “do unto others as one would have them do unto you” rule, both in faculty-student interactions and in student-student interactions).

⁵⁹ See generally Sears, J. T. (1997). Thinking critically/intervening effectively about heterosexism and homophobia: A twenty-five year research retrospective. In J. T. Sears, *Overcoming heterosexism and homophobia: Strategies that work* (pp. 13-24). New York: Columbia University Press.

⁶⁰ The widespread prevalence of heteronormativity can play a major role in perpetuating gays, lesbians, and transgender persons being looked down upon or seen on some level—including by ostensible allies and even by LGBTs themselves—as lesser persons with major physical and/or psychological defects. See Davidson, S. M. (2006). Exploring sociocultural borderlands: Journeying, navigating, and embodying a queer identity. *Journal of Men's Studies*, 14(1), 13-26 (documenting a study that had examined the recent experiences of a young gender-non-conforming Latino male).

⁶¹ In the area of curriculum, breakthroughs initially occurred at the higher-education level. Models were developed which could then be adapted in the K-12 public schools. See D'Emilio, J. (1992) *Making Trouble: Essays on Gay History, Politics, and the University*. New York, NY: Routledge, documenting the history of curriculum development in this area and demonstrating what gay and lesbian content in courses and programs might look like. For example, in the field of U.S. history, D'Emilio describes at length how the “preoccupation with a homosexual menace” was central to an understanding of the post-World War II cold war era and the emergence of McCarthyism.

At colleges and universities today, both in traditional departments and professional schools and through interdisciplinary LGBT studies programs, students can take courses that focus on gay and lesbian themes throughout history and on how sexual and gender identity is reflected in the work of noteworthy authors, poets, and artists.

In law schools, both in traditional courses and in newer courses focusing on such topics as sexual orientation law, transgender rights, and the law of sexuality in general, students can study legal developments in this context. In education schools, future teachers and future principals can address gay and transgender-related issues that may arise in their work. These courses and this content can and increasingly does provide a model for K-12 educators as to what might be included in an age-appropriate manner in their own classrooms. Topics that arise, for example, focus on campus safety, student activism, the right to be out, the right not to be out, school sports, the military, family, the impact of the same-sex marriage debates, transgender persons and gender equity, the rights of LGBT educators, issues relating to curriculum, religion, morality and values, and the unique challenges faced by LGBT students of color.

⁶² Communities might also consider including optional references to the LGBT status of authors in high school English classes, if this status is known to have played a central role in their life and work (in the same way that the relationships of straight authors are typically referenced in high school and college literature anthologies).

For examples of how LGBT-related curricular content can be and in many cases already has been aligned with state content standards, see, e.g., Hirschfeld, S. (2003). Stonewall Jackson and the Stonewall Riots Together. GLSEN Education Department. Retrieved May 17, 2010, from <http://www.glsen.org/cgi-bin/iowa/all/library/record/1773.html>.

A representative collection of LGBT-related curricular resources can be found on the Web site of the Washington Safe Schools Coalition. Through the efforts of community leader Beth Reis and other longtime educators, the coalition has not only developed materials but has compiled links to sample LGBT-related lesson plans and curricula created by educators across the nation. See www.safeschoolscoalition.org/blackboard-teachers.html.

⁶³ K-12 educational programs place great importance on an analysis of current events, creating opportunities for students to report on and discuss the major news stories of the day. In early 2010, examples of such news stories included:

- **Jan. 4th** - Openly Lesbian Annise Parker Sworn In as Mayor of Houston, TX.
- **Jan. 15th** - U.S. Dept. of Justice “Intervenes” in Title IX Lawsuit, Supports Young Gay Student’s Claim of Discrimination on the Basis of Gender Expression.

- **Jan. 27th** - President Obama Calls for Repeal of ‘Don’t Ask-Don’t Tell’ in State of the Union Address. Senate Bill To That End Subsequently Introduced by Sen. Joseph Lieberman in Early March.
- **Feb. 26th** - Closing Briefs Filed in Unprecedented Prop. 8 Trial.
- **Feb. 26th** - LGBT Center at UC Davis Vandalized.
- **Mar. 3rd-4th** - Marriage Licenses Issued for the First Time to Same-Sex Couples in Washington, D.C. and in Mexico City.

⁶⁴ A large and growing percentage of America’s youth participate in organized sports, from little leagues and soccer leagues through high school, college, and beyond. Many others participate in sports vicariously, as loyal fans.

Moreover, at schools, sports is also an integral part of physical education (PE), and PE teachers are often the same persons who coach the sports teams. See, e.g., Barber, H. & Krane, V. (2007). Creating a positive climate for lesbian, gay, bisexual, and transgender youths. *Journal of PE, Recreation, & Dance*, 78(7), 6-7, 52.

⁶⁵ See generally the National Center for Lesbian Rights (NCLR) Sports Project Overview, www.ncrlrights.org, which was “founded in 2001 as the first project of its kind to prioritize, through litigation and policy work, rampant anti-LGBT discrimination and forced invisibility of LGBT athletes, coaches, and sports professionals.”

⁶⁶ See, e.g., Jacobson, J. (2002, November 1). Facing derision in a macho culture. *Chronicle of Higher Education*.

See also Roberts, S. (2007, February 8). A player serves notice to homophobic sports culture. *New York Times* (describing the settlement in the lawsuit by former Penn State player Jennifer Harris against women’s basketball coach Rene Portland).

See generally Tualo, E. (2006). *Alone in the trenches: My life as a gay man in the NFL*. Naperville, IL.: Sourcebooks.

⁶⁷ See Amaechi, J. (2007). *The man in the middle*. New York: ESPN Books.

⁶⁸ Indeed, without the active involvement of persons from within the campus sports community, change may be very slow in coming. Coaches, athletic directors, team captains, and fans and supporters in the larger community can form a very insular group, so that even in a school that is developing an inclusive and gay-friendly environment overall, many of those involved in sports may decline to participate in such initiatives.

⁶⁹ Billy Bean, one of the handful of former participants in major men’s professional sports who came out after retiring, has written about his experiences both during the years he participated in baseball and later, when he began living as an openly gay man. The book reveals much about Bean’s years with the L.A. Dodgers, the San Diego Padres, and the Detroit Tigers, but one of the most poignant sections is his depiction of how a homophobic and heterosexist culture was already being fostered in organized competition at the fourth-grade level. See Bean, B. (2003). *Going the other way: Lessons from a life in and out of major league baseball*. New York: Marlowe & Co.

Bean told how he will never forget the first time he heard the word faggot on an athletic field. “Don’t run like a faggot, boy,” he remembers the coach of his Junior All-American Pop Warner football team shouting, after another fourth grader had missed a tackle (Bean, 2003, p. 107):

Every kid on the field that day got the message, despite what I suspect was our collective ignorance. What, exactly, was a faggot? How did faggots run? Clearly, it wasn’t a good thing. It was probably the worst thing imaginable. It equaled weakness and timidity, everything a budding, insecure jock wanted to avoid.

⁷⁰ See generally Biegel, S. (2010). *The right to be out: Sexual orientation and gender identity in America's public schools*. Minneapolis, MN: University of Minnesota Press.

⁷¹ 44 states have laws explicitly prohibiting bullying and harassment in schools: Alabama (H.B. 216, 2009 Reg. Sess. (Ala. 2009) (enacted)), Alaska (ALASKA STAT. § 14.33.200 (2010)), Arizona (ARIZ. REV. STAT. ANN. § 15-341 (2009)), Arkansas (ARK. CODE ANN. § 6-18-514 (2009)), California (CAL. EDUC. CODE § 220 (2009)), Colorado (COLO. REV. STAT. § 22-32-109.1 (2009)), Connecticut (CONN. GEN. STAT. § 10-222d (2009)), Delaware (DEL. CODE ANN. tit. 14 § 4112D (2009)), Florida (FLA. STAT. § 1006.147 (2009)), Georgia (GA. CODE ANN. § 20-2-751.4 (2009)), Idaho (IDAHO CODE ANN. § 18-917A (2009)), Illinois (105 ILL. COMP. STAT. 5/27-23.7 (2010)), Indiana (IND. CODE § 20-33-8-0.2 (2009)), Iowa (IOWA CODE § 280.28 (2009)), Kansas (KAN. STAT. ANN § 72-8256 (2009)), Kentucky (KY REV. STAT. § 525.070 (2009)), Louisiana (LA. REV. STAT. ANN. § 17:416.13 (2009)), Maine (ME. REV. STAT. ANN. tit. 20A, § 1001 (2010)), Maryland (MD. CODE ANN., EDUC. § 7-424.1 (2009)), Massachusetts (S. 2313, 86th Gen. Ct. (Mass. 2010) (enacted)), Minnesota (MINN. STAT. § 121A.0695 (2009)) Missouri (Mo. REV. STAT. § 160.775 (2009)), Nebraska (NEB. REV. STAT. § 79-2137 (2009)), Nevada (NEV. REV. STAT. § 388.121 *et seq.* (2009)), New Hampshire (N.H. REV. STAT. ANN. § 193-F:2 (2010)), New Jersey (N.J. STAT. ANN. § 18A:37-13 *et seq.* (2009)), New Mexico (N.M. STAT. ANN. § 6-12-7 (2009)), New York (S. 1987, 2009-2010 Reg. Sess. (N.Y. 2010) (enacted)), North Carolina (N.C. GEN. STAT. § 115C-407.15 (2009)), Ohio (OHIO REV. CODE ANN. § 3301.22 (2010)), Oklahoma (OKLA. STAT. tit. 70, § 24-100.3 (2009)), Oregon (OR. REV. STAT. § 339.351 (2009)), Pennsylvania (H.B. 1067, 2007 Sess. (Pa. 2008) (enacted)), Rhode Island (R.I. GEN. LAWS § 16-21-26 (2009)), South Carolina (S.C. CODE ANN. § 59-63-120 (2009)), Tennessee (TENN. CODE ANN. § 49-6-1014 *et seq.* (2009)), Texas (TEX. EDUC. CODE ANN. §§ 25.0341, 37.001, 37.083(a) (2009)), Utah (UTAH CODE ANN. § 53A-11a-101 *et seq.* (2009)), Vermont (VT. STAT. ANN. tit. 16, §§ 11, 14, 1161a (2009)), Virginia (VA. CODE ANN. § 22.1-279.6 (2009)), Washington (WASH. REV. CODE § 28A.300.285 (2009)), West Virginia (W.VA. CODE § 18-2C-1 *et seq.* (2009)), Wisconsin (S. 154, 2009-2010 Leg. (Wis. 2010) (enacted)), Wyoming (WYO. STAT. ANN. § 21-4-311 *et seq.* (2009)). This list does not include states with general school safety laws that do not specifically condemn bullying and harassment or states with anti-bullying and anti-harassment policies that have not been legislatively enacted.

⁷² See e.g., 105 ILL. COMP. STAT. 5/27-23.7 (2010).

⁷³ As of the summer of 2010, states with statutes prohibiting discrimination explicitly in schools based on any characteristic include: Arizona (charter schools, ARIZ. REV. STAT. § 15-184(B) (2009)), California (CAL. EDUC. CODE §§ 200, 201(a) (2009)), Colorado (COLO. REV. STAT. § 24-34-601 (2009)), Connecticut (CONN. GEN. STAT. § 10-15(c) (2009)), District of Columbia (D.C. CODE § 2-1402.41 (2009)), Florida (FLA. STAT. § 1000.05 (2009)), Georgia (GA. CODE ANN. § 20-2-131(20) (2009)), Idaho (IDAHO CODE ANN. § 67-5909(7)(a) (2009)); Illinois (775 ILL. COMP. STAT. 5/5(A)(II), 5/1-102(A) (2010)), Indiana (IND. CODE § 22-9-1-2(a) (2009)) Iowa (IOWA CODE § 216.9 (2009)), Louisiana (LA. REV. STAT. ANN. § 17:111 (2009)), Maine (ME. REV. STAT. ANN. tit. 5, § 46011 (2010)), Massachusetts (MASS. GEN. LAWS ANN. ch. 76, § 5 (2009)), Michigan (MICH. COMP. LAWS § 37-2102 (2009)); Minnesota (MINN. STAT. § 363A.13 (2009)), Montana (MONT. CODE ANN. § 49-2-307 (2009)); New Jersey (N.J. STAT. ANN. §§ 10:5-5(1), 10:5-4 (2009)), New York (S. 1987, 2009-2010 Reg. Sess. (N.Y. 2010) (enacted)), North Dakota (N.D. CENT. CODE § 14-02.4-01 (6)), Pennsylvania (24 PENN. CONS. STAT. § 5009 (2009)), South Dakota (S.D. CODIFIED LAWS § 20-13-22 (2009)), Tennessee (TENN. CODE ANN. § 49-6-3109 (2009)), Vermont (VT. STAT. ANN. tit. 9, §§ 4501, 4502 (2009)), Virginia (public charter schools, VA. CODE ANN. § 22.1-212.8 Washington (WASH. REV. CODE §§ 49.60.040(2), 49.60.215 (2009)), Wisconsin (WIS. STAT. § 118.13(1) (2009)), Wyoming (WYO. STAT. ANN. § 21-4-303 (2009)).

⁷⁴ Twelve states prohibit harassment and bullying in schools based on particular characteristics: California, Florida, Illinois, Iowa, Maine, Maryland, New Jersey, New York, North Carolina, Oregon, Vermont, Washington. (For the code sections where these protections appear, see n.71, *supra*).

⁷⁵ Thirteen states and the District of Columbia prohibit discrimination against students on the basis of sexual orientation and/or gender identity in schools: California (sexual orientation and gender identity), Colorado (sexual

orientation and gender identity), Connecticut (sexual orientation), District of Columbia (sexual orientation and gender identity), Illinois (sexual orientation and gender identity), Iowa (sexual orientation and gender identity), Maine (sexual orientation and gender identity), Massachusetts (sexual orientation), Minnesota (sexual orientation and gender identity), New Jersey (sexual orientation and gender identity), New York (sexual orientation and gender identity), Vermont (sexual orientation), Washington (sexual orientation and gender identity), Wisconsin (sexual orientation). (For the code sections where these protections appear, see n.73 *supra*). This list does not include states with anti-discrimination policies that have not been legislatively enacted.

⁷⁶ Twenty-one states and the District of Columbia prohibit employment discrimination on the basis of sexual orientation, gender identity, or both: California (sexual orientation and gender identity, Cal. Gov. Code § 12940 *et seq.* (2009)), Colorado (sexual orientation and gender identity, COLO. REV. STAT. § 24-34-402 (2009)), Connecticut (sexual orientation, CONN. GEN. STAT. § 46-81a (2009)), Delaware (sexual orientation, DEL. CODE ANN. tit. 19 § 710 (2009)), Hawaii (sexual orientation, HAW. REV. STAT. § 378 (2009)), Illinois (sexual orientation and gender identity, 775 ILL. COMP. STAT. § 5/2-201 (2009)), Iowa (sexual orientation and gender identity, IOWA CODE § 216.6 (2009)), Maine (sexual orientation and gender identity, ME. REV. STAT. ANN. tit. 5, § 4553 (2009)), Maryland (sexual orientation, MD. CODE ANN., STATE GOV'T § 20-606 (2009)), Massachusetts (sexual orientation, MASS. GEN. LAWS ch. 151B, § 4), Minnesota (sexual orientation and gender identity, MINN. STAT. § 363A.08 (2009)), Nevada (sexual orientation, NEV. REV. STAT. § 613.330 (2009)), New Hampshire (sexual orientation, N.H. REV. STAT. ANN. § 354-A:2 (2010)), New Jersey (sexual orientation and gender identity, N.J. STAT. ANN. § 10:5-5 (2009)), New Mexico (sexual orientation and gender identity, N.M. STAT. ANN. § 28-1-7 (2009)), New York (sexual orientation, N.Y. EXEC. LAW § 296 (2009)), Oregon (sexual orientation and gender identity, OR. REV. STAT. § 659A.030 (2009)), Rhode Island (sexual orientation and gender identity, R.I. GEN. LAWS § 28-5-6 (2009)), Vermont (sexual orientation and gender identity, VT. CODE REV. ANN. tit. 16, § 495 (2009)), Washington (sexual orientation and gender identity, WASH. REV. CODE § 49.60.030 (2009)), Wisconsin (sexual orientation, WIS. STAT. § 111.322 (2009)).

⁷⁷ Retrieved August 21, 2010, from http://www.leginfo.ca.gov/pub/03-04/bill/sen/sb_0051-0100/sb_71_bill_20031001_chaptered.html.

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